This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

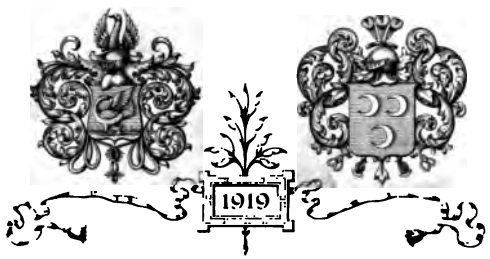
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`



GANSEVOORT-LANSING
COLLECTION

given to the New York Public Library
Astor Lenox and Tilden Foundations
BY VICTOR HUGO PALTSITS
under the terms of the last will and testament of
CATHERINE GANSEVOORT LANSING
granddaughter of
General Peter Gansevoort, junior
and widow of the
Honorable Abraham Lansing
of Albany, New York

YBX
Bacin

THE WORKS

OF

FRANCIS BACON.

THE

WORKS

OF

FRANCIS BACON,

BARON OF VERULAM, VISCOUNT ST. ALBANS, AND
LORD HIGH CHANCELLOR OF ENGLAND.

Collected and Edited

BY

JAMES SPEDDING, M.A.
OF TRINITY COLLEGE, CAMBRIDGE;

ROBERT LESLIE ELLIS, M.A.
LATE FELLOW OF TRINITY COLLEGE, CAMBRIDGE;

AND

DOUGLAS DENON HEATH,
BARRISTER-AT-LAW; LATE FELLOW OF TRINITY COLLEGE, CAMBRIDGE.

VOLUME XV.

BEING

VOL. V. OF THE LITERARY AND PROFESSIONAL WORKS.

BOSTON:
PUBLISHED BY BROWN AND TAGGARD.
M DCCC LXI.

THE NEW YORK
PUBLIC LIBRARY
15711A
ASTOR, LENOX AND
TILDEN FOUNDATIONS
R 1921 L

RIVERSIDE, CAMBRIDGE:
STEREOTYPED AND PRINTED BY
H O. HOUGHTON.

CONTENTS

OF

THE FIFTEENTH VOLUME.

PROFESSIONAL WORKS — CONTINUED.

PAGE

Discourse upon the Commission of Bridewell . 7

Arguments of Law 23

Case of Impeachment of Waste 35

Lowe's Case of Tenures 62

Case of Revocation of Uses 78

Jurisdiction of the Council of the Marches 93

Chudleigh's Case 155

Case of the Post-Nati of Scotland . . 189

Case De non procedendo Rege inconsulto . 249

Preparation for the Union of Laws . . . 313

Answers to Questions touching the Office of Constables 335

Ordinances in Chancery 347

Appendix 373

Index 383

DISCOURSE

UPON

THE COMMISSION OF BRIDEWELL.

PREFACE.

THIS was first published by Mr. Martin in his Report on Bridewell Hospital, 32nd *Rep. of Charity Commission*, part 6. p. 576.: from Harl. MS. 1323. He was kind enough to point it out to me; but Mr. Spedding had already made a copy of the MS., not being aware of its having been already printed.

There is another copy in the Cambridge Library, which is anonymous; and I am not aware of any circumstances otherwise tending to authenticate it. It appears however to be a legal opinion, to which a name must from the first have been attached, and I see no intrinsic reason for doubting its being Bacon's, of a time when he was a young man.

It speaks of "Her Majesty that now is," and was therefore written in Elizabeth's time, and a reference to Mr. Martin's Report will lead us to fix the date without much hesitation as of some time before Oct. 11th 1587. An order of Common Council, now at Guildhall, dated Augst. 4th 1579, professed to give the Governor of the Hospital very arbitrary powers over the rogues and vagabonds of London. A modified copy of this order, in print, is at Bridewell, bearing date Octr. 11th 1587. Mr. Martin thinks the date may be a mistake; and as he does not set out the

differences between the two, I can form no opinion whether this is really a new order: but on this same day another order was made with the preface, "This day certain orders and ordinances lately devised by the committees who were appointed to devise means for the banishment of rogues &c., were here in open court read, and by the same ratified and confirmed;" and the ordinances which follow are of a much less stringent character. Nothing seems more probable than that the question had been in the meantime discussed, whether it was quite safe to rely on the charter, and to ground on it such very strong measures as were at first contemplated.

If the paper be really Bacon's, it appears to me to be very interesting, as it ascertains in the most authentic way the constitutional opinions with which he entered into life. In particular, it is curious to see the jurisdiction of the Welsh Council rested on a purely parliamentary basis. I see no sufficient reason for thinking he ever altered this opinion, though he was of counsel to those who maintained the contrary one.[1]

[1] See Preface to the *Argument for the Council of the Marches.*

A BRIEF DISCOURSE

UPON

THE COMMISSION OF BRIDEWELL,

WRITTEN BY

SIR FRANCIS BACON, KNIGHT.[1]

Inter magnalia regni, amongst the greatest and most haughty things of this kingdom, as it is affirmed in the 19th year of Henry the 6th, 63,[2] *la ley est la plus haute enheritance que le Roy ad*, &c. that is, the Law is the most highest inheritance that the King hath; for by the law both the King and all his subjects are ruled and directed, &c.

The maxims and rules by which the King is directed are the ancient Maxims, Customs, and Statutes, of this land.

The Maxims are the foundations of the Law, and the full and perfect conclusions of reason.

The Customs of the Realm are properly such things as through much, often, and long usage either of simplicity or of ignorance getting once an entry, are

[1] The Cambridge MS. has merely "A Discourse upon the Commission of Bridewell." I do not suppose either title is the original one.

[2] The page of the Year Book is never given throughout the MS. When I have succeeded in lighting upon it, I have added it to the text

entered and hardened by succession, and after be defended as firm and stable laws.

The Statutes of the realm are the resolute decrees and absolute judgments of the Parliament, established by the King with the common consent of three Estates, who do represent the whole and entire body of the realm of England.

To the purpose of this discourse the law is, if any Charter be granted by a King the which is repugnant to the Maxims, Customs, or Statutes of the Realm; then is the Charter void. And it is either by *quo warranto* or by *scire facias* (as learned men have left precedents) to be repealed. Anno 19: Ed. 3.

That a King's grant either repugnant to law, custom, or statute is not good nor pleadable in the law, see what precedents thereof have been left by our wise forefathers. It is set down in the 14th Henry the 6th 11, 12. that King Henry the 2d had by his Charter granted to the Prior and Monks of St. Bartholomews in London, that the Prior and his Monks should be as free in their Church as the King was in his Crown; yet by this grant was the Prior and his Monks deemed and taken to be but as subjects, and the aforesaid grant in that respect to be void: for by the law the King may not any more disable himself of his regal superiority over his subjects, than his subject can renounce or avoid his subjection against or towards his King or superior. You know Story[1] would have renounced his loyalty and subjection to the Crown of England and would have adopted himself to have been a subject to King Philip. Answer was made by the Court, for that by the laws of this Realm neither may the King

[1] Dyer, 300.

release or relinquish the subjection of his subjects, neither may the subject revolt in his allegiance from the superiority of his Prince.

There are two notable precedents in the time of King Edward the 3d, the which although they take place in some one respect, yet were they not adjudged of according to the mind of the King being the grantor. That is, the King granted unto the Lord William Montague the Isle of Wight, and that he should be crowned King of the same. And he also granted unto the Earl of Darby the Isle of Man and that he should be crowned King of the same. Yet these two personages notwithstanding the said grants were subjects; and their islands were under the dominion and subjection of the King; and in that respect were the grants void.

It was spoken in the 8th of Henry 4th 9., *Quod potestas principis non est inclusa legibus:* that is, a prince's power is not bounded by rules or limits of the law. Howsoever that sentence is, see the law agreed to the contrary, the 37th[1] of Henry 6th 26, 27. whereas it is agreed for law that it is not in the King's power to grant by his Charter that a man seised of lands in fee simple may devise by his last will and testament the same lands to another, or that the youngest son by the custom of Borough English shall not inherit; or that lands being frank fee shall be of the nature of ancient demesne; or that in a new incorporated Town an assise of fresh force should be used, or that they shall have toll travers or through toll or such like, &c. 49 Ass. 4, 8.

[1] The MSS. have 31 Hen. 6. but a reference to 37 Hen. 6th is annexed, which is clearly the true one. S. C. Br. Prerog. 103.

See also a notable case agreed for law in the 6th of Henry 7th 4. where the justices do affirm the law to be that Rape is made felony by statute, that the same by the law is not enquirable but before justices that have authority to hear and determine of the same: in this case the King cannot by his charter make the same offence to be enquired of in a Lawe day, nor the King cannot grant that a Leet shall be of any other nature than it is by course of the Common Law. So that thereby it appeareth that the King may not either alter the nature of the law, the form of a court, or the manner and order of pleading.

And in the 8th of Henry 6th 19. it is agreed for law that the King may not grant to J. S. that J. S. may be judge in his own proper cause, nor that J. S. shall [not] [1] be sued by any action at the Common Law by any other person, nor that J. S. shall have a market, a fair, or a free warren in another man's soil.

And in the long Record,[2] by Hill the reverend judge it is said for law, that whereas the King hath a Prerogative that he shall have the wardship of the body of his tenants although he hold of the King by posteriority, yet if the King grant his signory unto another with like prerogative notwithstanding any posteriority, this prerogative shall not pass, for, saith the book, the King by his charter cannot change the law. The same law is, that the King cannot grant unto another the prerogative of *nullum tempus occurrit Regi*, nor that a descent shall not take away an entry, nor that a collateral warranty shall not bind, nor that *possessio fratris* shall not take place, nor that the wife shall not be endowed of her husband's lands, nor that inher-

[1] I have added this word conjecturally. [2] 14 Hen. 4. 9.

itance shall lineally ascend, nor that any subject shall be under protection from arrests and suits and such like, &c.

Yet do not we see daily in experience that whatsoever can be procured under the great seal of England is taken *quasi sanctum;* and although it be merely against the laws, customs, and statutes of this realm, yet it is defended in such sort, that some have been called rebellious for not allowing such void and unlawful grants?

And an infinite number of such like precedents I could set down to maintain the aforesaid argument, but these few examples shall serve for this time, &c.

But now have we to see if the said Charter granted to the city, concerning the authority of the Governor of Bridewell, stand with the laws, customs, and statutes of this Realm, or not: the effect of which charter in one place is that the Governors have authority to search, enquire, and seek out idle ruffians, tavern haunters, vagabonds, beggars, and all persons of evil name and fame whatsoever they be, men or women, and then to apprehend and the same to commit to Bridewell, or by any other way or means to punish or correct them as shall seem good to their discretions.

Here we see what the words of the said Charter are. Now are we to consider what the words of the Law be.

See Magna Charta of the liberties of England, cap. 29. No freeman shall be taken or imprisoned, or be disseised of his freehold, or liberties, or free customs, or be outlawed or exiled, or any other way destroyed, nor we shall not pass upon him nor condemn him but by lawful judgment of men of his degree, or the law of the land.

Now if we do compare the said Charter of Bridewell with the great Charter of England both in matter, sense, and meaning, you shall find them merely repugnant.

In the said great Charter of England, in the last chapter, amongst other things the King granteth for him and his heirs, that neither he nor his heirs shall procure or do anything whereby the liberties in the said Charter contained shall be infringed or broken; and if anything be procured or done by any person contrary to the premises it shall be had of no force or effect. Here must you note also that the said great Charter of England is not only confirmed by the statute of Marlebridge, cap. 5., but also by many other statutes made in the time of King Edward 3rd, King Richard 2nd, Henry 4th, Henry 5th, and Henry 6th, amongst sundry of which confirmations I note one above the rest, the which is Anno 42 Ed. 3. chap. 1. The words are these. It is assented and accorded that the great Charter of England and the Charter of the Forests shall be kept in all points, and if any statute be made to the contrary that shall be holden for none.

Hitherto ye see it very plainly that neither procurement nor act done either by the King or any other person, or any act of Parliament, or other thing may in any ways alter or change any one point contained in the said great Charter of England. But if you will note the words, sense, matter, and meaning of the said Charter of Bridewell, ye shall find it all merely repugnant to the said great Charter of England. I do note one special statute made in the said 42nd of Edward the 3rd, the which if it be well compared with the said Charter of Bridewell it will make an end of this con-

tention. The words are these. Item, at the request of the Commons by the petition put forth in this Parliament, to eschew the mischief and damage done to divers of the commons by false accusers which often times have made their accusements more for vengeance and singular profit than for the profit of the King and his people, of which accused persons some have been taken and caused to come &c. against the law; it is assented and accorded for the government of the Commons that no man be put to answer without presentment before Justices, or thing[1] of Record, [or] by due process, as by writ original, according to the old law of the land; and if anything from henceforth be done to the contrary it shall be void in the law and holden for error. As I said before, so say I still, if this statute be in force, as I am sure it is, then is the law clear that the proceedings in Bridewell upon the accusation of whores taken by the Governors of Bridewell aforesaid are not sufficient to call any man to answer by any warrant by them made, without indictment or other matter of Record according to the old law of the land.

Such like commissions as this of Bridewell is were granted in the time of K. Edward the Third by especial procurement to enquire of special articles, the which commissions did make their enquiries in secret places &c. It was therefore enacted Anno 42° Ed. 3. cap. 4. that henceforth in all enquiries within the realm Commissions should be made to some Justices of the one Bench or other, or Justices of Assize or Justices of the Peace with other of the most worthy of the Country. By this Statute we may learn that Commissions of Enquiries ought to sit in open Courts, and not in

[1] In the MS. it appears to be "of the King," obviously by a clerical error.

ıy close or secret place, and that their enquiries ought › be by juries and by no discretion or examination. If ·ou look upon the Statute of Anno 1° Hen. 8. cap. 8. ,ou shall there perceive the very cause why Empson and Sheffield and others were quite overthrown, the which was, as by the Indictment especially appeareth, for executing Commissions against due course of the common law, and in that they did not proceed in justice according to the liberties of the great Charter or England, and of other laws and statutes provided for the due executing of Justice.

There was a Commission granted forth in the beginning of the reign of her Majesty that now is, unto Sir Ambrose Cape, Sir Richard Sackville, and others, for the examination of felons and of other lewd prisoners. It so fell out that many men of good calling were impeached by the accusations of felons. Some great men, and Judges also, entered into the validity of the Commission. It was thought that the Commission was against the law and therefore did the Commissioners give over the Commission, as all men know.

And whereas the examination is by the Commission referred to the wisdom and discretion of the Governors of Bridewell, as touching this point I find that the examination of robberies done by sanctuary men was appointed unto the discretion of the Council or unto four Justices of the Peace; but this was not by commission or by grant, but by act of Parliament made Anno 22° Hen. 8. cap. 14. The Justices of both the Benches have used to examine the abilities and disabilities of attornies, and by their discretion to place or remove the same upon their misdemeanors, without any solemnity of trial at the Common Law; and that is and

hath been done by the Treasurer and Barons of the Exchequer touching the attorneys: but if you search the cause you shall find the same to be done by authority of Parliament, Anno 4° of Hen. 4. cap. 18.

And whereas sundry men are arrested by *latitat*, *capias*, attachments, and such like processes whereby their corporal presence is required, yet upon infirmities and other maladies the Justices, having examined the matter, may by their discretions admit them to make attornies; but note you that all this is done by authority of Parliament in Anno 7° H. 46. cap. 13.

The Commission of Bankrupts giveth power to the Commissioners to take order by their discretions both with the body and goods of the bankrupt and to set the bankrupt out of his house, and him to imprison; and all this is referred to the discretion of the Commissioners: but this is by authority of Parliament, Anno 13 Eliz. cap. 7.

The punishment and examination of such as counterfeit letters or privy tokens is referred to the discretions of the Justices of peace in every county: but this is by Parliament, Anno 33 Hen. 8th, cap. 1.

The examination of Riots, Routs, and such like misdemeanors in the Star Chamber is referred to the discretion of the Judges of the Court: but this is by Parliament, Anno 3 Hen. 7. cap. 1. et 21 Hen. 8. cap. 20.

The examination of unlawful hunting in the King's warrens &c. is referred to the discretion of the Justices of peace, and if the offender deny his hunting, then it is felony. This also is by Parliament, Anno 1° Hen. 7. cap. 7.

The rate, taxation, and punishment of servants la-

bourers and of their wages is referred to the discretion of the Justices of peace in every county. And this also is by Parliament, Anno 5° Eliz. cap. 4.

The examination of Rogues and vagabonds, with the forms of their punishment, is referred to the Justices, but by Parliament.

The determination of all causes in Wales is referred to be ended by the King's Council there established by their wisdoms and discretions: but yet this is by Parliament.

The grant of the pluralities, *tot quot* qualifications, dispensations, licenses, and tolerations, is referred to the discretion of the Archbishop of Canterbury: but this is by Parliament.

The dealings and examinations of High Commissioners are authorised altogether by Parliament.

And to be short, ye shall find in the great volume of the Statutes near the number of forty Acts of Parliament that do refer the examination or punishment of offenders to the wisdom and discretion of the Justices; whereupon I note that if the King by prerogative might have done all things by Commission or by Charter, that it had been vain to have made so many laws in Parliament for the same, &c.

And to make the law more manifest in this question, Anno 42 Ed. 3. lib. Assis. N° 5. a commission was sent out of the Chancery to one I. S. and others, to arrest the body and goods of A. B. and him to imprison. And the Justices gave judgment that this Commission was directly against the law, to take any man's body without indictment; and therefore they took the Commission from the Commissioners to the intent to deliver the same to the King's Council, *quod nota.*

And I do find also in the 24th of Ed. 3. this precedent; that a Commission was granted unto certain persons for to indict all those that were notoriously slandered for any felonies, trespasses, or for any other misdemeanors, yea although they were indicted for the same; and it was adjudged that this commission was directly against the law.

And [thus][1] I do conclude upon the whole matter that the Commission of Bridewell would be well considered of by the learned Counsell of the city; for I do not think the contrary but that there be learned[2] that by their great knowledge in the law are well able either in a *quo warranto*, or any other action brought to defend the same, &c.

[1] "These" in MS.

[2] So in both MSS. I take the general meaning to be, that though he has given reasons for doubting the validity of the Charter, yet it may be that the City counsel may be able to defend it.

FINIS.

ARGUMENTS OF LAW.

PREFACE.

THE Dedication and first four of these Arguments were printed by Blackbourne in 1730, from Sloane MS. 4263., a MS. largely corrected by Bacon himself. The Dedication, as first copied in the uncorrected draft, must have been written while Coke was Chief Justice of the Common Pleas, *i. e.* before Mich. Term, 1613; but, if I am right in identifying the *Case of Impeachment of Waste* with Lewis Bowles' Case, the transcript must have been made after Easter Term, 1615. Bacon's interlineations fix his revision as of the time when he was a Privy Councillor and Coke Chief Justice of the King's Bench, *i. e.* 1616, and before November of that year.

These four Arguments are given in the order of the MS. The others follow in their own chronological order.

THE

ARGUMENTS OF LAW

OF

SIR FRANCIS BACON, KNIGHT,

THE KING'S SOLICITOR GENERAL,

IN CERTAIN GREAT AND DIFFICULT CASES.

TO

MY LOVING FRIENDS AND FELLOWS,

THE

READERS, ANCIENTS, UTTER-BARRISTERS, AND STUDENTS OF GRAY'S INN.

I DO not hold the law of England in so mean an account, but that which other laws are held worthy of should be due likewise to our laws, as no less worthy for our state. Therefore, when I found that, not only in the ancient times, but now at this day in France, Italy, and other nations, the speeches, and as they term them pleadings, which have been made in judicial cases, where the cases were weighty and famous, have been set down by those that made them, and published, so that not only a Cicero, or a Demosthenes, or an Æschines hath set forth his orations, as well in the kind judicial as deliberative, but a Marrian[1] and a Pavier have done the like by their pleadings, I know no reason why the same should not be brought in use by the professors of our law for their arguments in principal cases. And this I think the more necessary, because the compendious form of reporting resolutions

[1] No doubt the *Plaidoyers de Marion* are meant, though the earliest edition mentioned in the *Bibliothèque de Droit*, by Camus and Dupin, is of 1625. I have not found the name of Pavier.

with the substance of the reasons, lately used by Sir Edward Coke, Lord Chief Justice of the King's Bench,[1] doth not delineate or trace out to the young practisers of law a method and form of argument for them to imitate.

It is true, I could have wished some abler person had begun; but it is a kind of order sometimes to begin with the meanest. Nevertheless, thus much I may say with modesty, that these arguments which I have set forth (most of them) are upon subjects not vulgar, and therewithal, in regard of the commixture that the course of my life hath made of law with other studies, they may have the more variety, and perhaps the more depth of reason: for the reasons of municipal laws severed from the grounds of nature, manners, and policy are like wall flowers, which, though they grow high upon the crests of states, yet they have no deep roots. Besides, in all public service I ever valued my reputation more than my pains, and therefore, in weighty causes I always used extraordinary diligence. In all which respects I persuade myself the reading of them will not be unprofitable.

This work I knew not to whom to dedicate rather than to the Society of GRAY'S INN, the place whence my father was called to the highest place of justice, and where myself have lived and had my proceeding so far as, by his Majesty's rare if not singular grace, to be of both his counsels, and therefore few men so bound to their societies by obligation both ancestral and personal, as I am to yours: which I would gladly acknowledge, not only in having your name joined

[1] In the first draft, "Common Pleas:" and then follows "as it is far best for the science of Law itself, so nevertheless it doth not," &c.

with mine own in a book, but in any other good office and effect which the active part of my life and place may enable me unto, toward the Society, or any of you in particular. And so I bid you right heartily farewell.

Your assured loving Friend and Fellow,

F. B.

I. The Argument before the Judges in the Exchequer Chamber, touching the Clause of Impeachment of Waste.

II. The Argument in Lowe's Case, touching Tenures, in the King's Bench.

III. The Argument of the Lady Stanhope's Case, touching the Clause of Revocation of Uses, in the King's Bench.

IV. The several Arguments proving the Jurisdiction of the Council of the Marches over the Four English Shires, before all the Judges at Serjeants' Inn.

THE

CASE OF IMPEACHMENT OF WASTE.

THE case needs neither repeating nor opening.[1] The point in substance is but one; familiar to be put, but difficult to be resolved; that is, whether upon a lease without impeachment of waste, the property of the timber trees after severance be not in him that is owner of the inheritance?

The case is of great weight, and the question of great difficulty: weighty it must needs be, for that it doth concern, or may concern, all the lands in England; and difficult it must be, because this question sails *in confluentiis aquarum;* in the meeting or strife of two great tides. For there is a strong current of practice and opinion on the one side, and there is a more strong current (as I conceive) of authorities both ancient and late on the other side. And, therefore according to the reverend custom of the realm it is brought now to this assembly. And it is high time the question received an end, the law a rule, and men's conveyances a direction.

[1] Bacon makes a note in the MS.: "The case to be had from Mr. Heath or Serj. Finch;" which gives a further indication of time, for Finch was not called to the coif till Easter, 1615. Dugdale, *Origines Juridiciales.* The case is obviously *Lewis Bowles' case* 11 Co. 79. S. C. 1 Roll. 177. It was decided in the K. B. against the plaintiff, who thereupon talked of bringing error: apparently he did so and had Bacon for his counsel. We may assume he was unsuccessful, as the law remained undisturbed.

This doubt ariseth and resteth upon two things to be considered: first, to consider of the interest and property of a timber tree, to whom it belongs; and secondly, to consider of the construction and operation of these words or clause, *absque impetitione vasti:* for within these two branches will aptly fall whatsoever can be pertinently spoken in this question, without obscuring the question by any other curious division.

For the first of these considerations, which is the interest or property of a timber tree, I will maintain and prove to your lordships three things.

First, that a timber tree, while it groweth, is merely parcel of the inheritance, as well as the soil itself. And secondly I will prove that when either nature or accident or the hand of man hath made it transitory, and cut it off from the earth, it cannot change owner, but the property of it goeth where the inheritance was before. And thus much by the rules of the common law.

And thirdly, I will show that the statute of Gloucester doth rather corroborate and confirm the property in the lessor than alter it, or transfer it to the lessee.

And for the second consideration, which is the force of that clause, *absque impetitione vasti*, I will also uphold and make good three other assertions.

First that if that clause should be taken in the sense which the other side would force upon it, that it were a clause repugnant to the state and void.

Secondly, that the sense which we conceive and give is natural in respect of the words, and, for the matter, agreeable to reason and the rules of law.

And lastly that if the interpretation seem ambiguous and doubtful, yet the very mischief itself, and consid-

eration of the commonwealth, ought rather to incline your lordships' judgment to our construction.

My first assertion therefore is, that a timber tree is a solid parcel of the inheritance; which may seem a point admitted, and not worth the labouring. But there is such a chain in this case, as that which seemeth most plain, if it is sharply looked into, doth invincibly draw on that which is most doubtful. For if the tree be parcel of the inheritance unsevered, inhering in the reversion, severance will not alien it; nor the clause will not divest it.

To open, therefore, the nature of an inheritance: Sense teacheth there be of the soil and earth parts that are raised and eminent, as timber trees, rocks, houses. There be parts that are sunk and depressed, as mines which are called by some *arbores subterraneæ*, — because that as trees have great branches, and smaller boughs, and twigs, so have they in their region greater and smaller veins: so if we had in England beds of porcelain, such as they have in China, — which porcelain is a kind of a plaster buried in the earth and by length of time congealed and glazed into that fine substance; this were as an artificial mine, and no doubt part of the inheritance. Then are there the ordinary parts, which make the mass of the earth, as stone, gravel, loam, clay, and the like.

Now as I make all these much in one degree, so there is none of them, not timber trees, not quarries, not minerals or fossils, but hath a double nature; inheritable and real while it is contained with the mass of the earth, and transitory and personal when it is once severed. For even gold and precious stone, which is more durable out of earth than any tree is upon the

earth; yet the law doth not hold of that dignity as to be matter of inheritance, if it be once severed. And this is not because it becometh moveable, for there be moveable inheritances, as villains in gross, and dignities which are judged hereditaments; but because by their severance they lose their nature of perpetuity, which is of the essence of an inheritance.

Nevil's case proving there are inheritances which are not local. 7 Co. 121.

The consent of the law with philosophy in distinguishing between perpetual and transitory.

And herein I do not a little admire the wisdom of the laws of England, and the consent which they have with the wisdom of philosophy, and nature itself. For it is a maxim of philosophy, that *in regione elementari nihil est æternum, nisi per propagationem speciei, aut per successionem partium.* And it is most evident that the elements themselves, and their products, have a perpetuity not *in individuo*, but by supply and succession of parts. For example, the vestal fire, that was nourished by the virgins at Rome was not the same fire still, but was in perpetual waste, and in perpetual renovation. So it is of the sea, and waters; it is not the same water individually, for that exhales by the sun, and is fed again by showers. And so of the earth itself, and mines, quarries, and whatsoever it containeth, they are corruptible individually, and maintained only by succession of parts; and that lasteth no longer than they continue fixed to the main and mother globe of the earth, and is destroyed by their separation.

According to this I find the wisdom of the law by imitation of the course of nature, to judge of inheritances and things transitory. For it alloweth no portions of the earth, no stone, no gold, no mineral, no tree, no mould, to be longer inheritance than they ad-

here to the mass, and so are capable of supply in their parts; for by their continuance of body stands their continuance of time.

Neither is this matter of discourse, except the deep and profound reasons of law which ought chiefly to be searched shall be accounted discourse, as the slighter sort of wits (*scioli*) may esteem them.

And therefore now that we have opened the nature of inheritable and transitory; let us see, upon a division of estates and before severance, what kind of interest the law allotteth to the owner of inheritance, and what to the particular tenant; for they be competitors in this case.

First, in general the law doth assign to the lessor those parts of the soil conjoined which have obtained the reputation to be durable, and of continuance, and such as being destroyed are not but by long time renewed; and to the termor it assigneth such interests as are tender, and feeble against the force of time, but have an annual, or seasonable return or revenue. And herein it consents again with the wisdom of the civil law; for our inheritance and particular estate is in effect their[1] *dominium* and *usus-fructus;* for so it was conceived upon the ancient statute of depopulations, 4° Hen. VII. which was penned, *that the owner of the land should re-edify the houses of husbandry*, that the word *owner* (which answereth to *dominus*) was, he that had the immediate inheritance, and so ran the later statutes.

The consent of the law with the civil law in the distinguishing between inheritance and particular estates, which hath relation to their division of *dominium* and *usus-fructus*.

Owner in the stat. 4 H. 7.

Let us see therefore what judgment the law maketh of a timber tree; and whether the law doth not place it

[1] "There" in the MS.

within the lot of him that hath the inheritance, as parcel thereof.

The writ of waste supposeth the felling timber to be *ad exhæredationem.*

First, it appeareth by the register out of the words of the writ of waste, that the waste is laid to be *ad exhæredationem*, which presupposeth *hæreditatem:* for there cannot be a disinherison by the cutting down of the tree except there was an inheritance in the tree; *quia privatio præsupponit actum.*

The statute of Gloucester is, *quod recuperet rem vastatam*, not *locum vastatum.*

Again it appeareth out of the words of the statute of Gloucester well observed that the tree and the soil are one entire thing; for the words are *quod recuperet rem vastatam*, and yet the books speak, and the very judgment in waste is, *quod recuperet locum vastatum*, which shows that *res* and *locus* are in exposition of law taken indifferently; for the lessor shall not recover only the stem of the tree, but he shall recover the very soil wherewith the stem continues. And therefore it is notably ruled in 22 H. 6. f. 13. 22 H. VI. f. 13., that if the termor do first cut down the tree, and then destroy the stem, the lessor shall declare upon two several wastes, and recover treble damages for them severally. But, says the book, he must bring but one writ, for he can recover the place wasted but once.

Soby v. Mollins. Plowd. 470.

And farther proof may be fitly alleged out of Mullin's case in the Commentaries, where it is said that for timber trees tithes shall not be paid. And the reason of the book is well to be observed; *for that tithes are to be paid for the revenue of the inheritance and not for the inheritance itself.*

Nay, my lords, it is notable to consider, what a reputation the law gives to the trees, even after they are

severed by grant, as may be plainly inferred out of Herlackenden's case, L. Coke, p. 4. f. 62. I mean the principal case; where it is resolved that if the trees being excepted out of a lease be granted to the lessee, or if the grantee of trees accept a lease of the land, the property of the trees drowns[1] not, as a term should drown in a freehold, but subsists as a chattel divided; which shows plainly, though they be made transitory, yet they still to some purpose savour of the inheritance; for if you go a little farther, and put the case of a *state tail*, which is a state of inheritance, then I think clearly they are reannexed. But on the other side if a man buy corn standing upon the ground, and take a lease of the same ground where the corn stands, I say plainly it is reaffixed, for *paria copulantur cum paribus*. 4. Co. 62.

And it is no less worthy the note, what an operation the inheritance leaveth behind it in matter of waste, even when it is gone; as appeareth in the case of tenant after possibility, who shall not be punished: for though the new reason be, because his estate was not within the statute of Gloucester; yet I will not go from my old Master Littleton's reason, which speaketh out of the depth of the common law, he shall not be punished *for the inheritance sake which was once in him.*

But this will receive a great deal of illustration by considering the termor's estate, and the nature thereof, which was well defined by Mr. Heath (who spake excellent well to the case) that it is such as he ought to yield up the inheritance in as good plight as he received it; and therefore the word *firmarius* (which is the word of the statute of

The derivation and force of the word *firmarius*.

[1] "Drown" in the MS.; and so "subsist" (for "subsists") below.

Marlebridge) cometh (as I conceive) *a firmando*, because he makes the profit of the inheritance, which otherwise should be upon account and uncertain, firm and certain; and accordingly *feodi firma*, — fee-farm, — is a perpetuity certain. Therefore the nature and limit of a particular tenant is to make the inheritance certain, and not to make it worse.

First therefore he cannot break the soil otherwise than with his ploughshare to turn up perhaps a stone, that lieth aloft; his interest is *in superficie* not *in profundo*, he hath but *tunicam terræ*, little more than the vesture.

If we had fir timber here, as they have in Muscovy, he could not pierce the tree to make the pitch come forth no more than he may break the earth.

The evidences *propugnaculum hæreditatis.*

So we see the evidence, which is *propugnaculum hæreditatis*, the fortress and defence of the land, belongeth not to the lessee, but to the owner of the inheritance.

Homage importeth continuance in the blood. Particular tenants of seigniories shall not have aid.

So the lessee's estate is not accounted of that dignity, that it can do homage, because it is a badge of continuance in the blood of lord and tenant. Neither, for my own opinion, can a particular tenant of a manor have aid, *pour file marier, ou pour faire fitz chevalier;* because it is given by law upon an inducement of continuance of blood and privity between lord and tenant.

And for the tree which is now in question; do but consider in what a revolution the law moves, and as it were in an orb: for when the tree is young and tender — *germen terræ*, a sprout of the earth, — the law giveth it to the lessee, as having a nature not permanent, and yet easily restored: when it comes to be a timber-tree,

and hath a nature solid and durable, the law carrieth it to the lessor. But after again, if it become a sear and a dotard, and his solid parts grow putrified, and as the poet saith, *non jam mater alit tellus viresque ministrat*, then the law returns it back to the lessee. This is true justice, this is *suum cuique tribuere*, the law guiding all things with line of measure, and proportion.

The phrase that the lessee hath a special property in the tree, very improper; for he hath but the profits of the tree.

And therefore that interest of the lessee in the tree which the books call a special property is scarce worth that name. He shall have the shade, so shall he have the shade of a rock; but he shall not have a crystal, or Bristol diamond growing upon the rock. He shall have the pannage;[1] why, that is the fruit of the inheritance of a tree, as herb or grass is of the soil. He shall have seasonable loppings; why, so he shall have seasonable diggings of an open mine. So all these things are rather profits of the tree, than any special property in the tree. But about words we will not differ.

So as I conclude this part, that the reason and wisdom of law doth match things as they consort, ascribing to permanent states permanent interest, and to transitory states transitory interest; and you cannot alter this order of law, by fancies of clauses and liberties, as I will tell you in the proper place. And therefore the tree standing belongs clearly to the owner of the inheritance.

Now come I to my second assertion; that by the severance, the ownership or property cannot be altered, but that he that had the tree as part of the inheritance before, must have it as a chattel transitory after. This

[1] Swine-food, acorns, &c.

is pregnant, and followeth of itself, for it is the same tree still; and, as the Scripture saith, *uti arbor cadet, ita jacet.*

The owner of the whole must needs own the parts; he that owneth the cloth owneth the thread, and he that owneth an engine when it is entire owneth the parts when it is broken; breaking cannot alter property.

Herlackenden's case.

And therefore the book in Herlackenden's case doth not stick to give it somewhat plain terms, and to say that it were an absurd thing, that the lessee which hath a particular interest in the land, should have an absolute property in that which is part of the inheritance: you would have the shadow draw the body, and the twigs draw the trunk. These are truly called absurdities. And therefore in a conclusion so plain, it shall be sufficient to vouch the authorities without enforcing the reasons.

And although the division be good, that was made by Mr. Heath, that there be four manners of severances, that is, when the lessee fells the tree, or when the lessor fells it, or when a stranger fells it, or when the act of God, a tempest, fells it, yet this division tendeth rather to explanation, than to proof: and I need it not, because I do maintain that in all these cases, the property is in the lessor.

Three arguments of property, damages, seisure, and power to grant.

And therefore I will use a distribution which rather presseth the proof. The question is of property. There be three arguments of property, damages, seisure, and grant: and according to these I will examine the property of the trees by the authority of books.

And first for damages.

For damages, look into the books of the law; and you shall not find the lessee shall ever recover damages, not as they are a badge of property; for the damages which he recovereth are of two natures, either for the special property (as they call it), or as he is chargeable over. And for this to avoid length I will select three books, one where the lessee shall recover treble damages, another where he shall recover but for his special property, and the third where he shall recover for the body of the tree, which is a special case, and standeth merely upon a special reason.

The first is the book of 44 E. III. f. 27. 44 E. 3. f. 27. where it is agreed that if tenant for life be, and a disseisor commit waste, the lessee shall recover in trespass, as he shall answer in waste. But that this is a kind of recovery of damages but *per accidens*, may appear plainly.

For if the lessor die, whereby his action is gone, then the disseisor is likewise discharged otherwise than for the special property.

The second book is 9 E. IV. f. 35. where 9 E. 4. f. 35. it is admitted that if the lessor himself cut down the tree, the lessee shall recover but for his special profit of shade, pannage, loppings, because he is not charged over.

The third is 44 E. III. f. 44. where it is 44 E. 3. f. 44. said, that if the lessee fell trees, to repair the barn, which is not ruinous in his own default, and the lessor come and take them away, he shall have trespass, and in that case he shall recover for the very body of the tree, for he hath an absolute property in them for that intent.

And that it is only for that intent appeareth 38 Ass. f. 1.

notably by the book 38 *Ass.* f. 1. If the lessee after he hath cut down the tree employ it not to reparations, but employ other trees of better value, yet it is waste; which showeth plainly the property is respective to the employment.

5 E. 4. f. 100. Nay 5 E. IV. f. 100. goeth farther, and showeth, that the special property which the lessee had was of the living tree, and determines as Herlackenden's case saith by severance; for then *magis dignum trahit ad se minus dignum.* For it saith that the lessee cannot pay the workman's wages with those parts of the tree which are not timber. And so I leave the first demonstration of property, which is by damages; except you will add the case of 27 H. VIII. f. 13. where it is said, that if tenant for life and he in the reversion join in a lease for years, and lessee for years fell timber trees, they shall join in an action of waste, but he in the reversion shall recover the whole damages: and great reason, for the special property was in the lessee for years, the general in him in the reversion, so the tenant for life mean had neither the one nor the other.

27 H. 8. f. 13.

Now for the seisure; you may not look for plentiful authority in that: for the lessor, which had the more beneficial remedy by action for treble damages, had little reason to resort to the weaker remedy by seisure, and leases without impeachment were then rare, as I will tell you anon. And therefore the question of the seisure came chiefly in experience upon the case of the windfalls which could not be punished by action of waste.

40 E. 3. pl. 22. First, therefore, the case of 40 E. III. pl. 22. is express, where at the King's suit in the behalf

of the heir of Darcy, who was in ward, the King's lessee was questioned in waste, and justified the taking of the trees, because they were overthrown by winds, and taken away by a stranger. But Knevet saith, *although one be guardian, yet the trees when by their fall they are severed from the freehold, he hath no property of the chattels, but they appertain to the heir;* and the heir shall have trespass of them against a stranger, and not the guardian, no more than the bailiff of a manor. So that that book rules the interest of the tree to be in the heir, and goes to a point[1] farther, that he shall have trespass for them; but of seisure there had been no question.

So again in 2 H. VII. the words of Brian 2 H. 7. f. 14. are that for the timber-trees *the lessor may take them, for they are his*, and seemeth to take some difference between them and the gravel.

The like reason is of the timber of a house, 34 E. 3. f. 5. as appears 34 E. III. f. 5., abridged by Brook Tit. *Waste*, pl. 34., when it is said it was doubted who should have the timber of a house which fell by tempest; and, saith the book, it seems it doth appertain to the lessor; and good reason, for it is no waste, and the lessee is not bound to reedify it: and therefore it is reason the lessor have it; but Herlackenden's case goes farther, where it is said that the lessee may help himself with the timber if he will reedify it; but clearly he hath no interest, but towards a special employment.

Now you have had a case of the timber-tree, and of the timber of the house; now take a case of the mine, where that of the trees is likewise put, and that is 9

[1] "appoint" in MS.

9 E. 4. f. 35. E. IV. f. 35. where it is said by Needham, that if a lease be made of land, wherein there is tin, or iron, or lead, or coals, or quarry, and the lessor enter, and take the tin or other materials, the lessee shall punish him for coming upon his land, but not for taking of the substances. And so of great trees. But Danby goes farther and saith, the law that gives him the thing doth likewise give him means to come by it; but they both agree that the interest is in the lessor. And thus much for the seisure.

For the grant, it is not so certain a badge of property as the other two. For a man may have a property, and yet not grantable, because it is turned into a right, or otherwise suspended. And therefore it is true that by the book in 21 H. VI. f. that if the lessor grant the trees, the grantee shall not take them, no not after the lease expired, because this property is but *de futuro*, *expectant;* but it is as plain on the other side, that the lessee cannot grant them, as was resolved in two notable cases, namely, the case of Marwood and Sanders, 41 El. *in communi banco*, where it was ruled, that the tenant of the inheritance may make a feoffment with exception of timber trees, but that if lessee for life or years set over his estate with an exception of the trees, the exception is utterly void; and the like resolution was in the case between Foster and Mills plaintiffs, and Spenser and Boord defendants, 28 Eliz. rot. 820.

Marwood and Sanders. 5 Co. 12.

Foster and Spencer's case.

Now come we to the authorities which have an appearance to be against us, which are not many, and they be easily answered, not by distinguishing subtilly, but by marking the books advisedly.

First, there be two books that seem to cross the

authorities touching the interest of the wind-falls, 7 H. VI. and 44 E. III. f. 44., where upon waste brought and assigned in the succision of trees, the justification is that they were overthrown by wind, and so the lessee took them for fuel, and allowed for a good plea; but these books are reconciled two ways. First, look into both the justifications, and you shall find that the plea did not rely only in that they were windfalls, but couples it with this, that they were first sere, and then overthrown by wind; and that makes an end of it, for sere trees belong to the lessee, standing or felled, and you have a special replication in the book of 44 E. III. that the wind did but rend them, and buckle them, and that they bore fruit two years after. And secondly, you have ill-luck with your windfalls, for they be still apple-trees, which are but wastes *per accidens*, as willows or thorns are in the sight of a house: but when they are once felled they are clearly matter of fuel.

7 H. 6. 44 E. 3. f. 44.

Another kind of authorities, that make show against us, are those that say that the lessee shall punish the lessor in trespass for taking the trees, which are 5 H. IV. f. 29. and 1 Mar. *Dyer*, f. 90. Mervin's case; and you might add if you will 9 E. IV. the case vouched before: unto which the answer is, that trespass must be understood for the special property, and not for the body of the tree; for those two books speak not a word what he shall recover, nor that it shall be to the value. And, therefore, 9 E. IV. is a good expositor, for that distinguisheth where the other two books speak indefinitely. Yea, but 5 H. IV. goes farther, and saith, that the writ shall purport *arbores suas*, which is true in respect of the special property;

5 H. 4. f. 29. Dyer, f. 90.

neither are writs to be varied according to special cases, but are framed to the general case; as upon lands recovered in value in tail, the writ shall suppose *donum*, a gift.

And the third kind of authority is some books (as 13 H. 7. f. 9. 13 H. VII. f. 9.) that say, that trespass lies not by the lessor against the lessee for cutting down trees, but only waste; but that is to be understood of trespass *vi et armis*, and would have come fitly in question if there had been no seisure in this case.

Upon all which I conclude, that the whole current of authorities proveth the properties of the trees upon severance to be in the lessor by the rules of the common law; and that although the common law would not so far protect the folly of the lessor, as to give him remedy by action, where the state was created by his own act, yet the law never took from him his property, so that, as to the property, before the statute and since, the law was ever one.

Now come I to the third assertion, that the statute of Gloucester hath not transferred the property of the lessee upon an intendment of recompense to the lessor: which needs no long speech. It is grounded upon a probable reason, and upon one special book.

The reason is, that damages are a recompense for property; and therefore that the statute of Gloucester giving damages should exclude property: the authority 12 E. 4. f. 8. seems to be 12 E. IV. f. 8., where Catesbey, affirming that lessee at will shall have the great trees, as well as lessee for years or life, Fairfax and Jennings correct it with a difference, that the lessor may take them in the case of tenant at will, because he hath no remedy by the statute, but not in case of the termor.

This conceit may be reasonable thus far; that the lessee shall not both seise and bring waste, but if he seise he shall not have his action, if he recover by action he shall not seise. For a man shall not have both the thing and recompense. It is a bar to the highest inheritance (the kingdom of Heaven) *receperunt mercedem suam.* But at the first, it is at his election whether remedy he will use; like as in the case of trespass, where if a man once recover in damages it hath concluded and turned the property. Nay, I invert the argument upon the force of the statute of Gloucester thus; that if there had been no property at common law, yet the statute of Gloucester, by restraining the waste, and giving an action, doth imply a property; whereto a better case cannot be put than the case upon the statute *de donis conditionalibus*, where there are no words to give any reversion or remainder, and yet the statute giving a *formedon*, where it lay not before, being but an action, implies an actual reversion and remainder.

A statute giving an action impleth an interest.

Thus have I passed over the first main part, which I have insisted upon the longer, because I shall have use of it for the clearing of the second.

Now to come to the force of the clause, *absque impetitione vasti.* This clause must of necessity work in one of these degrees, either by way of grant of property, or by way of power and liberty knit to the state, or by way of discharge of action: whereof the first two I reject, the last I receive.

First therefore I think the other side will not affirm that this clause amounts to a grant of trees; for then, according to the resolution in Herlackenden's case, they should go to the executors, and

No grant of property.

the lessee might grant them over, and they might be taken after the state determined. Now it is plain that this liberty is created with the estate, passeth with the estate, and determines with the estate.

5 H. 5. That appears by 5 Hen. V. where it is said that if lessee for years without impeachment of waste accept a confirmation for life, the privilege is gone.

3 E. 3. 28 H. 8. And so are the books in 3 E. III. and 28 H. VIII. that if a lease be made without impeachment of waste *pour autre vie*, the remainder to the lessee for life, the privilege is gone, because he is in of another estate; so then plainly it amounts to no grant of property, neither can it any ways touch the property, nor enlarge the special property of the lessee. For will any man say, that if you put Marwood and Sanders's case of a lease without impeachment of waste, that he may grant the land with the exception of the trees any more than an ordinary lessee? Or shall the windfalls be more his in this case than in the other? for he was not impeachable of waste for windfalls no more than where he hath the clause. Or will any man say, that if a stranger commit waste, such a lessee may seise? These things, I suppose, no man will affirm. Again, why should not a liberty or privilege in law be as strong as a privilege in fact? as in the case of tenant after possibility? or where there is a lessee for life the remainder for life? For in these cases they are privileged from waste, and yet that trenches not the property.

Now, therefore, to take the second course, that it should be as a real power annexed to the state; neither can that be, for it is the law that mouldeth estates, and

not men's fancies. And therefore if men by clauses, like voluntaries in music, run not upon the grounds of law, and do restrain an estate more than the law restrains it, or enable an estate more than the law enables it, or guide an estate otherwise than the law guides it, they be mere repugnancies and vanities. And therefore if I make a feoffment in fee provided the feoffee shall not fell timber, the clause of condition is void. And so on the other side, if I make a lease with a power that he shall fell timber, it's void.

So if I make a lease with a power that he may make feoffment, or that he may make leases for forty years, or that if he make default I shall not be received, or that the lessee may do homage; these are plainly void, as against law, and repugnant to the state. No, this cannot be done by way of use, 1 Co. 175. except the words be apt, as in Mildmay's case: neither is this clause in the sense that they take it, any better.

Therefore, laying aside these two constructions, whereof the one is not maintained to be, the other cannot be: let us come to the true sense of this clause, which is by way of discharge of the action, and no more. Wherein I will speak first of the words, then of the reason, then of the authorities which prove our sense, then of the practice which is pretended to prove theirs; and, lastly, I will weigh the mischief how it stands for our construction or theirs.

It is an ignorant mistaking if any man take impeachment for *impedimentum*, and not for *impetitio*. For it is true that *impedimentum* doth extend to all hindrances, or disturbances, or interruptions, as well *in pais* as judicial: but *impetitio* is merely a judicial claim or inter-

ruption by suit in law, and upon the matter all one with *implacitatio*. Wherein first we may take light of the derivation of *impetitio*, which is a compound of the preposition *in* and the verb *peto*, whereof the verb *peto* itself doth signify a demand, but yet properly such a demand as is not *extrajudicial:* for the words *petit judicium*, *petit auditum Brevis*, &c. are words of acts judicial; as for the demand *in pais*, it is rather *requisitio*, than *petitio*, as *licet sæpius requisitus*. So much for the verb *peto*. But the preposition *in* enforceth it more, which signifies against: as *Cicero in Verrem*, *in Catilinam;* and so, in composition, to inveigh is to speak against. So it is such a demand only where there is a party raised to demand against, that is an adversary, which must be in a suit in law. And so it is used in records of law.

As Coke, lib. 1. f. 17., Porter's case, it was pleaded in bar that *dicta domina regina nunc ipsos Johannem et Henricum Porter impetere seu occasionare non debet*, that is, *implacitare*.

So likewise Coke, l. 1. f. 27., case of Alton Woods, *quod dicta domina regina nunc ipsum proinde aliqualiter impetere seu occasionare non debet.*

So in the book of entries, f. 1. *lit.* D. 15 H. VII. rot. 2., *inter placita Regis. Et super hoc venit N. B. Comonachus Abbatis W. loci illius ordinarii, gerensque vices ipsius Abbatis, ad quoscunque clericos de quolibet crimine coram domino Rege impetit' sive irritat' calumniand'*. So much *ex vi et usu termini*.

For reason; first it ought to be considered that the punishment of waste is strict and severe, because the penalty is great; treble damages, and the place wasted: and again, because the lessee must undertake for the

acts of strangers. Whereupon I infer, that the reason which brought this clause in use *ab initio* was caution, to save and to free men from the extremity of the penalty, and not any intention to countermand the property.

Add to this, that the law doth assign in most cases double remedy, by matter of suit and matter *in pais;* for disseisins, actions [and] [1] entries; for trespasses, action and seisure; for nuisances, action and abatement; and, as Littleton doth instruct us, one of these remedies may be released without touching the other. If the disseisee release all actions, saith Littleton, yet my entry remains. But if I release all demands, or remedies, or the like words of a general nature, it doth release the right itself. And therefore I may be of opinion, that if there be a clause of grant in my lease expressed that *if my lessee or his assigns cut down and take away any timber-trees that I and my heirs will not charge them by action, claim, seisure, or other interruption*, either this shall inure by way of covenant only, or if you take it to inure by way of absolute discharge, it amounts to a grant of property in the trees: like as the case of 31 *Assis.;* [2] I grant that if I pay not you ten pounds per annum at such feasts, you shall distrain for it in my manor of Dale; though this sound executory in power yet it amounts to a present grant of a rent. So as I conclude that the discharge of action the law knows, grant of the property the law knows, but this same mathematical power being a power amounting to a property, and yet no property, and knit to a state that

31 *Assis.* A clause that sounds to a power amounts to a property, if the state bear it.

[1] Not in MS.

[2] A blank for the folio is left in the MS.

den's case, and reported to my Lord Chief Justice here present, as a resolution of law, — being our very case.

Statute of Marlebridge. And for the cases to the contrary, I know not one in all the law direct. They press the statute of Marlebridge which hath an exception in the prohibition *firmarii non facient vastum, etc. nisi specialem inde habuerint concessionem per scriptum conventionis, mentionem faciens, quod hoc facere possint.* This presseth not the question, for no man doubts but it will excuse in an action of waste; and again *nisi habeant specialem concessionem* may be meant of an absolute grant of the trees themselves. And otherwise the clause *absque impetitione vasti* taketh away the force of the statute and looseth what the statute bindeth, but it toucheth not the property at common law.

Littleton. For Littleton's case in his title of conditions, where it is said that if a feoffment in fee be made upon condition, that the feoffee shall infeoff the husband and wife, and the heirs of their two bodies; and that the husband die; that now the feoffee ought to make a lease without impeachment of waste to the wife, the remainder to the right heirs of the body of her husband and her begotten; whereby it would be inferred, that such a lessee should have equal privileges with tenant in tail: the answer appears in Littleton's own words, which is that the feoffee ought to go as near the condition, and as near the intent of the condition, as he may, but to come near is not to reach, neither doth Littleton undertake for that.

Culpepper's case. Dyer, f. 184. As for Culpepper's case, 2 El. f. 184., it is obscurely put, and concluded in division of opinion; but yet so as it rather makes for us. The case is 2 Eliz. Dyer, fol. 184. and is in effect this. A

man makes a lease for years, excepting timber-trees, and afterwards makes a lease without impeachment of waste to John a Style, and then grants the land and trees to John a Down, and binds himself to warrant and save harmless John a Down against John a Style; John a Style cuts down the trees. The question was, whether the bond were forfeited? and that question resorts to the other question; whether John a Style, by virtue of such lease could fell the trees? and held by Weston and Brown that he could not: which proves plainly for us, that he had no property by that clause in the tree; though it is true that, in that case, the exception of the trees turneth the case; and so in effect it proveth neither way.

For the practice: if it is so ancient and common, as is conceived; yet since the authorities have not approved, but condemned it, it is no better than a popular error: it is but *pedum visa est via*, not *recta visa est via*. But I conceive it to be neither ancient nor common. It is true I find it first in 19 E. II. (I mean such a clause), but 'tis one thing to say that the clause is ancient, and it is another thing to say, that this exposition, which they would now introduce, is ancient. And therefore you must note, that a practice doth then expound the law, when the act, which is practised, were merely tortious or void, if the law should not approve it; but that's not the case here, for we agree the clause to be lawful; nay, we say that it is in no sort *inutile*, but there is use of it, to avoid this severe penalty of treble damages. But to speak plainly, I will tell you this clause came in from 13 of E. I. till about 12 of E. IV. The state tail, though it

Practice.

had the qualities of an inheritance, yet it was without power to alien: but as soon as that was set at liberty by common recoveries, then there must be found some other device, that a man might be an absolute owner of the land for the time, and yet not enabled to alien, and for that purpose was this clause found out: for you shall not find in one amongst a hundred, that farmers had it in their leases; but those that were once owners of the inheritance, and had put it over to their sons or next heirs, reserved such a beneficial state to themselves. And therefore the truth is, that the flood of this usage came in with perpetuities, save that the perpetuity was to make an inheritance like a state for life, and this was to make a state for life like an inheritance; both concurring in this, that they presume to create fantastical estates contrary to the ground of law. And therefore it is no matter though it went out with the perpetuities, as it came in; to the end that men that have not the inheritance should not have power to abuse the inheritance.

And for the mischief, and consideration of *bonum publicum*, certainly this clause with this exposition tendeth but to make houses ruinous, and to leave no timber upon the ground to build them up again. And therefore let men in God's name, when they establish their states, and plant their sons or kinsmen in the inheritance of some portions of their lands, with reservation of the freehold to themselves, use it, and enjoy it in such sort, as may tend *ad ædificationem*, and not *ad destructionem;* for that's good for posterity, and for the state in general.

And for the timber of this realm, 'tis *vivus thesaurus regni;* and 'tis the matter of our walls, walls not only

of our houses, but of our island: so as 'tis a general disinherison to the kingdom to favour that exposition, which tends to the decay of it, being so great already; and to favour waste when the times themselves are set upon waste and spoil. Therefore since the reason and authorities of law, and the policy of estate do meet, and that those that have, or shall have such conveyances, may enjoy the benefit of that clause to protect them in a moderate manner, that is, from the penalty of the action, it is both good law and good policy for the kingdom, and not injurious or inconvenient for particulars, to take this clause strictly, and therein to affirm the last report. And so I pray judgment for the plaintiff.

THE

ARGUMENT

IN

LOWE'S CASE OF TENURES

IN THE KING'S BENCH.[1]

THE manor of Alderwasley, parcel of the Duchy and lying out of the county Palatine, was (before the Duchy came to the Crown) held of the King by knight-service *in capite*. The land in question was held of the said manor in *socage*. The Duchy and this manor parcel thereof descended to King Henry IV. King Henry VIII. by letters patent 19° of his reign, granted this manor to Anthony Lowe, grandfather of the ward, and then tenant of the land in question, reserving twenty-six pounds ten shillings rent and fealty *tantum pro omnibus servitiis;* and this patent is under the duchy seal only. The question is *how this tenancy is held, whether in* capite *or in* socage.

The case rests upon two points, unto which all the questions arising are to be reduced. The first is,

[1] S. C. in Court of Wards, 9 Co. 123., where the decision was adverse to this argument. I do not know whether there was any way in which the cause could be removed into the King's Bench.

whether this tenancy being, by the grant of the King of the manor to the tenant, grown to an unity of possession with the manor, be held as the manor is held, which is expressed in the patent to be in *socage.*

The second, *whether the manor itself be held in* socage *according to the last reservation, or* in capite *by revivor of the ancient seigniory, which was* in capite *before the Duchy came to the Crown.*

Therefore my first proposition is, that this tenancy (which without all colour is no parcel of the manor) cannot be comprehended within the tenure reserved upon the manor, but that the law createth a several and distinct tenure thereupon; and that not guided according to the express tenure of the manor, but merely *secundum normam legis,* by the intendment and rule of law, which must be a tenure by knight-service *in capite.*

And my second proposition is, that admitting that the tenure of the tenancy should ensue the tenure of the manor, yet nevertheless, the manor itself, which was first held of the Crown *in capite,* and the tenure suspended by the conquest of the Duchy to the Crown, being now conveyed out of the Crown under the duchy seal only; (which hath no power to touch or carry any interest, whereof the King was vested in right of the Crown;) 'tis now so severed and disjoined from the ancient seigniory, which was *in capite,* as the same ancient seigniory is revived, and so the new reservation void, because the manor cannot be charged with two tenures.

The king's tenures may take more hurt by a resolution in

This case concerneth one of the greatest and fairest flowers of the crown, which is the King's tenures, and that in their creation,

law, than by many suppressions or concealments.

which is more than their preservation: for if the rules and maxims of law in the first raising of tenures *in capite* be weakened, this nips the flower in the bud, and may do more hurt by a resolution in law, than the losses which the King's tenures do daily receive by oblivion or suppression, or the neglect of officers, or the iniquity of jurors, or other like blasts, whereby they are continually shaken. And therefore it behoveth us of the King's council to have a special care of this case as much as in us is to give satisfaction to the court. Therefore before I come to argue these two points particularly, I will speak something of the favour of law towards tenures *in capite*, as that which will give a force and edge to all that I shall speak afterwards.

No land in the kingdom of England charged by way of tribute, and all land charged by way of tenure.

The constitution of this Kingdom appeareth to be a free Monarchy in nothing better than in this; that as there is no land of the subject that is charged to the crown by way of tribute, or tax, or tallage, except it be set by parliament; so on the other side, there is no land of the subject but is charged to the crown by tenure, mediate or immediate, and that by the grounds of the Common Law. This is the excellent temper and commixture of this estate, bearing marks of the sovereignty of the king, and of the freedom of the subject from tax, whose possessions are *feodalia*, not *tributaria*.

Tenures, according to the most general division, are of two natures, the one containing matter of protection, and the other matter of profit. That of protection is likewise double, divine protection and military. The divine protection is chiefly procured by the prayers of holy and devout men; and great pity it is, that it was

depraved and corrupted with superstition. This begot the tenure in *frankalmoigne*, which though in burden it is less than in *socage*, yet in virtue it is more than a knight's service. For we read how during the while Moses in the mount held up his hands the Hebrews prevailed in battle; as well as that when Elias prayed, rain came after drought, which made the plough go; so that I hold the tenure in frankalmoigne in the first institution indifferent to knight-service and socage. Setting apart this tenure, there remain the other two; that of knight-service, and that of socage; the one tending chiefly to defence and protection, the other to profit and maintenance of life. They are all three comprehended in the ancient verse, *Tu semper ora, tu protege, tuque labora.* But between these two services, knight-service and socage, the law of England makes a great difference. For this kingdom (my lords) is a state neither effeminate nor merchant-like; but the laws give the honour unto arms and military service, like the laws of a nation before whom Julius Cæsar turned his back, as their own prophet says: *Territa quæsitis ostendit terga Britannis.* And therefore howsoever men, upon husbandlike considerations of profit, esteem of socage tenures; yet the law, that looketh to the greatness of the kingdom, and proceedeth upon considerations of estate, giveth the pre-eminence altogether to knight-service.

We see that the ward, who is ward for knight-service land, is accounted in law disparaged, if he be tendered a marriage of the burghers' parentage: and we see that the knights' fees were by the ancient laws the materials of all nobility, for that it appears by divers records how many knights' fees should by com-

putation go to a barony, and so to an earldom. Nay, we see that, in the very summons of parliament, the knights of the shire are required to be chosen *milites gladio cincti;* so as the very call, though it were to council, bears a mark of arms and habiliments of war. To conclude, the whole composition of this warlike nation, and the favour of law, tend to the advancement of military virtue and service.

But now farther, amongst the tenures by knight-service, that of the King *in capite* is the most high and worthy; and the reason is double; partly because it is held of the King's crown and person, and partly because the law createth such a privity between the line of the Crown and the inheritors of such tenancies, as there cannot be an alienation without the King's license; the penalty of which alienation was by the common law the forfeiture of the state itself, and by the statute of E. III. is reduced to fine and seisure. And although this also have been unworthily termed by the vulgar *captivity*[1] and thraldom; yet that which they count bondage, the law counteth honour; like to the case of tenants in tail of the King's advancement, which is a great restraint by the statute of 34 H. VIII. but yet by that statute it is imputed for an honour. This favour of law to the tenure by knight-service *in capite* produceth this effect, that wheresoever there is no express service effectually limited, or wheresoever that which was once limited faileth, the law evermore supplieth a tenure by knight-service *in capite;* if it be a blank once, that the law must fill it up, the law ever

[1] The words "not capite" are interlined over this, by way of exhibiting the play on the sound; but I think it is the hand and the lighter-coloured ink of a subsequent corrector, who is not generally happy.

with her own hand writes, *tenure by knight-service* in capite. And therefore the resolution was 44 E. 3. f. 45. notable by the judges of both benches, that where the King confirmed to his farmer tenant for life, *tenend' per servitia debita*, this was a tenure *in capite;* for other services are *servitia requisita*, required by the words of patents or grants; but that only is *servitium debitum* by the rules of law.

The course, therefore, that I will hold in the proof of the first main point, shall be this: First, I will show, maintain, and fortify my former grounds, that wheresoever the law createth the tenure of the King, the law hath no variety, but always raises a tenure *in capite.*

Secondly, that in the case present, there is not any such tenure expressed, as can take place and exclude the tenure in law, but that there is as it were a lapse to the law.

And, lastly, I will show in what cases the former general rule receiveth some show of exception, and will show the difference between them and our case; wherein I shall include an answer to all that hath been said on the other side.

For my first proposition I will divide into four branches; first, I say where there is no tenure reserved, the law createth a tenure *in capite;* secondly, where the tenure is uncertain; thirdly, where the tenure reserved is impossible or repugnant to law; and lastly, where a tenure once created is afterwards extinct.

For the first, if the King give lands and say nothing of the tenure, this is a tenure *in capite;* nay, if the King give whiteacre and blackacre, and reserves a tenure only of whiteacre, and

Per Prisot in fine, 33 H. 6. f. 7. 8 H. 7. f. 8.

that a tenure expressed to be in socage, yet you shall not for fellowship sake (because they are in one patent) intend the like tenure of blackacre; but that shall be held *in capite.*

So if the King grant land held as of a manor with warranty, and a special clause of recompense, and the tenant be impleaded, and recover in value; this land shall be held *in capite*, and not of the manor.

So if the King exchange the manor of Dale for the manor of Sale, which is held in socage, although it be by the word *excambium;* yet that goeth to equality of the state, not of the tenure; and the manor of Dale (if no tenure be expressed) shall be held *in capite.* So much for silence of tenure.

For the second branch, which is incertainty of tenure. First, where an *ignoramus* is found by office, this, by the common law, is a tenure *in capite*, which is most for the King's benefit; and the presumption of law is so strong, that it amounts to a direct finding or affirmative, and the party shall have a negative, or traverse, which is somewhat strange to a thing indefinite.

5 Mar. Dyer, f. 161, 162. [14 Eliz. Dyer, 306.]

So if in ancient time one held of the King, as of a manor by knight-service, and the land return to the King by attainder, and then the King granteth it *tenend' per fidelitatem tantum*, and it returneth the second time to the King, and the King granteth it *per servitia antehac consueta;* now because of the incertainty neither service shall take place, and the tenure shall be *in capite*, as was the opinion of you my lord chief justice, where you were commissioner to find an office after Austin's death.

Austin's office.

So if the King grant land *tenend' de manerio de* East

Greenwich *vel de honore de* Hampton, this is void, for the non-certainty, and shall be held of the King *in capite.*

For the third branch; if the King limit land to be discharged of tenure, as *absque aliquo inde reddendo*, this is a tenure *in capite;* and yet if one should go to the next, *ad proximum*, it should be a socage, for the least is next to none at all. But you may not take the King's grant by argument; but where they cannot take place effectually and punctually as they are expressed, there you shall resort wholly to the judgment of law. 33 H. 6. f. 7.

So if the King grant land *tenend' si franck-ment come il est en son corone*, this is a tenure *in capite.* 14 H. 6. f. 12.

If land be given to be held of a lord[1] not capable, as of Salisbury Plain, or a corporation not *in esse*, or of the manor of a subject, this is a tenure *in capite.* Merefeild's case.

So if land be given to hold by impossible service, as by performing the office of the sheriff of Yorkshire (which no man can do but the sheriff) and fealty, for all service, this is a tenure *in capite.*

For the fourth branch, which cometh nearest to our case, let us see where seigniory was once and is after extinguished. This may be in two manners, by release in fact, or by unity of possession which is a release or discharge in law.

And therefore let the case be, that the King releaseth to his tenant that holds of him in socage; this release is good, and the tenant shall now hold *in capite*, for the former tenure being discharged, the tenure in law ariseth. *Vide* 30 H. 8. Dyer, 44, 45. 8 H. 7. f. 13.

[1] The MS. has only L.: The Editions have it, "lordships."

1 E. 3. f. 4. fine accept; unde collect.[1] So the case which is in 1 E. III. A fine is levied to J. S. in tail, the remainder ouster to the King, the state tail shall be held *in capite*, and the first tenancy, if it were in socage, by the unity of the tenancy shall be discharged, and a new raised thereupon: and therefore the opinion, or rather the *quaere*, in Dyer, no law.

4 et 5 P. M. Thus much for my major proposition: now for the minor, or the assumption, it is this: first, that the land in question is discharged of tenure by the purchase of the manor; then that the reservation of the service upon the manor cannot possibly inure to the tenancy; and then if a corruption be of the first tenure, and no generation of the new, then cometh in the tenure *per normam legis*, which is *in capite*.

And the course of my proof shall be *ab enumeratione partium*, which is one of the clearest and most forcible kinds of argument.

If this parcel of land be held by fealty and rent *tantum*, either it is the old fealty before the purchase of the manor, or it is the new fealty reserved and expressed upon the grant of the manor; or it is a new fealty raised by intendment of law in conformity and congruity of the fealty reserved upon the manor; but none of these: *ergo*, &c.

That it should be the old fealty, is void of sense; for it is not *ad eosdem terminos*. The first fealty was between the tenancy and the manor; that tenure is by the unity extinct. Secondly, that was a tenure of a manor, this is a tenure in gross. Thirdly, the rent of twenty-six pounds ten shillings must needs be new, and

[1] So in MS. I cannot interpret it.

will you have a new rent with an old fealty? These things are *portenta in lege;* nay, I demand if the tenure of the tenancy (Lowe's tenure) had been by knight-service, would you have said that had remained? No, but that it was altered by the new reservation; *ergo* no colour of the old fealty.

That it cannot be the new fealty is also manifest. For the new reservation is upon the manor, and this is no part of the manor: for if it had escheated to the King in an ordinary escheat, or come to him upon a mortmain, in these cases it had come in lieu of the seigniory, and been parcel of the manor, and so within the reservation, but clearly not upon a purchase in fact.

Again the reservation cannot inure, but upon that which is granted; and this tenancy was never granted, but was in the tenant before; and therefore no colour it should come under the reservation. But if it be said, that nevertheless the seigniory of that tenancy was parcel of the manor, and is also granted, and although it be extinct in substance, yet it may be *in esse*, as to the King's service; this deserveth answer; for this assertion may be colourably inferred out of Carr's case. 3 Co. 30.

King Edward VI. grants a manor, rendering ninety-four pounds rent in fee farm *tenendum de* East Greenwich in socage; and after, Queen Mary grants these rents amongst other things *tenendum in capite*, and the grantee released to the heir of the tenant; yet the rent shall be *in esse*, as to the King, but the land (saith the book) shall be devisable by the statute for the whole, as not held *in capite*.

And so the case of the honour of Pickering, where the King granted the bailiwick, rendering Ass. pl. 60.

rent, and after granted the honour, and the bailiwick became forfeited, and the grantee took forfeiture thereof, whereby it was extinct; yet the rent remaineth as to the King out of the bailiwick extinct.

These two cases partly make not against us, and partly make for us. There be two differences that avoid them. First, there the tenures or rents are *in esse* in those cases for the King's benefit, and here they should be *in esse* to the King's prejudice, who should otherwise have a more beneficial tenure. Again, in these cases the first reservation was of a thing *in esse* at the time of the reservation; and then there is no reason the act subsequent of the King's tenant should prejudice the King's interest once vested and settled: but here the reservation was never good, because it is out of a thing extinct in the instant.

But the plain reason which turneth Carr's case mainly for us is; for that where the tenure is of a rent or seigniory, which is afterwards drowned or extinct in the land, yet the law judgeth the same rent or seigniory to be *in esse*, as to support the tenure: but of what? only of the said rent or seigniory, and never of the land itself: for the land shall be held by the same tenure it was before. And so is the rule of Carr's case, where it is adjudged that though the rent be held *in capite*, yet the land was nevertheless devisable for the whole as no ways charged with that tenure.

Why then in our case, let the fealty be reserved out of the seigniory extinct, yet that toucheth not at all the land. And then of necessity the land must be also held; and therefore you must seek out a new tenure for the land, and that must be *in capite*.

And let this be noted once for all, that our case is

not like the common cases of a meanalty extinct, where the tenant shall hold of the lord as the mean held before; as where the meanalty is granted to the tenant, or where the tenancy is granted to the mean, or where the meanalty descendeth to the tenant, or where the meanalty is forejudged. In all these cases the tenancy (I grant) is held as the meanalty was held before; and the difference is, because there was an old seigniory in being which remaineth untouched and unaltered, save that it is drawn a degree nearer to the land; so as there is no question in the world of a new tenure. But in our case there was no *lord paramount;* for the manor itself was in the Crown, and not held at all, nor no seigniory of the manor *in esse*, so as the question is wholly upon the creation of a new seigniory, and not upon the continuance of an old.

For the third course, that the law should create a new distinct tenure by fealty of this parcel, guided by the express tenure upon the manor; it is the probablest course of the three: but yet, if the former authorities I have alleged be well understood and marked, they show the law plainly, that it cannot be. For you shall ever take the King's grant *ad idem*, and not *ad simile*, or *ad proximum;* no more than in the case of the *absque aliquo reddendo*, or as free as the Crown. Who would not say that in those cases it should amount to a socage tenure; for *minimum est nihilo proximum:* and yet they are tenures by knight-service *in capite*. So if the King by one patent pass two acres, and a fealty reserved but upon the one of them, you shall not resort to this, *ut expressum servitium regat vel declaret tacitum*. No more shall you in our case imply that the express tenure reserved upon the manor shall govern or declare

the tenure of the tenancy, or control the intendment of law concerning the same.

Now will I answer the cases which give some shadow on the contrary side, and show they have their particular reasons, and do not impugn our case.

First if the King have land by attainder of treason, and grant the land to be held of himself and of other lords, this is no new tenure *per normam legis communis*, but the old tenure *per normam statuti*, which taketh away the intendment of the common law; for the statute directeth it so, and otherwise the King shall do a wrong.

So if the King grant land parcel of the demesne of a manor *tenendum de nobis*, or reserving no tenure at all, this is a tenure of the manor or of the honour, and not *in capite:* for here the more vehement presumption controlleth the less; for the law doth presume the King hath no intent to dismember it from the manor, and so to lose his court and the perquisites.

25 H. 6. f. 56. 9. So if the King grant land *tenendum* by a rose *pro omnibus servitiis;* this is not like the cases of the *absque aliquo inde reddendo*, or as free as the crown: for *pro omnibus servitiis* shall be intended for all express service; whereas fealty is incident, and passeth *tacite*, and so it is no impossible or repugnant reservation.

This is no frankalmoigne. Wood's case. The case of the frankalmoigne (I mean the case where the King grants lands of the Templers to J. S. to hold as the Templers did), which cannot be frankalmoigne, and yet hath been ruled to be no tenure by knight-service *in capite*, but only a socage tenure, is easily answered, for that the frankalmoigne is but a species of a tenure in socage

with a privilege; so the privilege ceaseth, and the tenure remains.

To conclude, therefore, I sum up my argument thus: my major is, where *calamus legis* doth write the tenure it is knight-service *in capite:* my minor is, this tenure is left to the law. *Ergo*, this tenure is *in capite.*

For the second point I will first speak of it according to the rules of the common law, and then upon the statutes of the duchy.

First I do grant, that where a seigniory and a tenancy, or a rent and land, or trees and land, or the like primitive and secondary interests are conjoined in one person, yea though it be *in autre droit*, yet if it be of like perdurable estate, they are so extinct, as by act in law they may be revived, but by grant they cannot.

For if a man have a seigniory in his own right, and the land descends to his wife, and his wife dieth without issue, the seigniory is revived; but if he will make a feoffment in fee, saving his rent, he cannot do it. But there is a great difference, and let it be well observed, between *autre capacitie* and *autre droit;* for in case of *autre capacitie* the interests are *contigua*, and not *continua*, conjoined, but not confounded. And therefore if the Master of an hospital have a seigniory, and the Mayor and commonalty of St. Albans have a tenancy, and the master of the hospital be made mayor, and the mayor grant away the tenancy under the seal of the Mayor and commonalty, the seigniory of the hospital is revived.

So between natural capacity and politic; if a man have a seigniory to him and his heirs, and a bishop is tenant, and the lord is made bishop, and the bishop,

before the statute, grants away the land under the Chapter's seal, the seigniory is revived.

The same reason is between the capacity of the Crown and the capacity of the Duchy, which is in the King's natural capacity, though illustrate with some privileges of the Crown; if the King have the seigniory in the right of his crown, and the tenancy in the right of the Duchy (as our case is) and make a feoffment of the tenancy, the tenure must be revived; and this is by the ground of the common law. But the case is the more strong by reason of the statutes of 1 H. IV. 3 H. V. and 1 H. VII. of the duchy, by which the Duchy seal is enabled to pass lands of the duchy, but no ways to touch the Crown: and whether the King be in actual possession of the thing, that should pass, or have only a right, or a condition, or a thing in suspense (as our case is) all is one; for that seal will not extinguish so much as a spark of that which is in the right of the Crown. And so a plain revivor.

And if it be said that a mischief will follow, for that upon every Duchy patent men shall not know how to hold, because men must go back to the ancient tenure, and not rest in the tenure limited; for this mischief there grows an easy remedy which likewise is now in use, which is to take both seals, and then all is safe.

Secondly, as the King cannot under the duchy seal grant away his ancient seigniory in the right of his crown, so he cannot make any new reservation by that seal; and so of necessity it falleth to the law to make the tenure. For every reservation must be of the nature of that that passeth, as a Dean and Chapter cannot grant land of the Chapter, and reserve a rent to the dean and his heirs, nor *è converso:* nor no more

can the King grant land of the Duchy under that seal and reserve a tenure to the Crown ; and therefore it is warily put in the end of the case of the Duchy in the Commentaries, where it is said if the King Plowd. 228. make a feoffment of the duchy land the feoffee shall hold *in capite;* but not a word of that it should be by way of express reservation, but upon a feoffment simply the law shall work it and supply it.

To conclude, there is direct authority in the point, but that it is *via versa;* and it was the Bishop of Salisbury's case. The King had in the right of the Duchy a rent issuing out of land which was monastery land, which he had in the right of the Crown, and granted away the land under the great seal to the bishop: and yet nevertheless the rent continued to the Duchy, and so upon great and grave advice it was in the Duchy decreed. So, as your lordship seeth, whether you take the tenure of the tenancy, or the tenure of the manor, this land must be held *in capite:* and therefore, &c.

LADY STANHOPE'S CASE.[1]

The Case shortly put without names or dates more than of necessity is this.

Sir John[2] Stanhope conveys the manor of Burrowash to his lady for part of her jointure, and intending (as is manifest) not to restrain himself nor his son from disposing some proportion of that land according to their occasions, so as my lady were at no loss by the exchange, inserts into the conveyance a power of revocation and alteration in this manner: *provided that it shall be lawful for himself and his son successively to alter and make void the uses, and to limit and appoint new uses, so it exceed not the value of twenty pounds, to be computed after the rents then answered, and that immediately after such declaration, or making void, the feoffees shall stand seised to such new uses;* ita quod, *he or his son within six months after such declaration or making void shall assure, within the same towns* tantum terrarum et tenementorum, et similis valoris *as were so revoked, to the uses expressed in the first conveyance.*

Sir John Stanhope, his son, revokes the land in Burrowash and other parcels, not exceeding the value of

[1] I have not found any Report of this case.

[2] So in MS.; but apparently the father is Thomas, and the son John. See further on.

twenty pounds, and within six months assures to my lady and to the former uses Burton Joyce, and other lands; and the jury have found that the lands revoked contain twice so much in number of acres, and twice so much in yearly value, as the new lands, but yet that the new lands are rented at twenty-one pounds, and find the lands of Burrowash now out of lease formerly made: and that no notice of this new assurance was given before the ejectment, but only that Sir John Stanhope had by word told his mother that such an assurance was made, not showing or delivering the deed.

The question is, Whether Burrowash be well revoked: which question divides itself into three points.

First, whether the *ita quod* be a void and idle clause? For if so, then there needs no new assurance, but the revocation is absolute *per se*.

The next is, if it be an effectual clause, whether it be pursued or no? Wherein the question will rest, whether the value of the reassured lands shall be only computed by rents.

And the third is, if in other points it should be well pursued; yet whether the revocation can work until a sufficient notice of the new assurance?

And I shall prove plainly that *ita quod* stands well with the power of revocation; and if it should fall to the ground it draws all the rest of the clause with it, and makes the whole void, and cannot be void alone by itself.

I shall prove likewise that the value must needs be accounted not a tale value, or an arithmetical value by the rent, but a true value in quantity and quality.

And lastly that a notice is of necessity as this case is.

I will not deny, but it is a great power of wit to make clear things doubtful; but it is the true use of wit to make doubtful things clear, or at least to maintain things that are clear to be clear, as they are. And in that kind I conceive my labour will be in this case, which I hold to be a case rather of novelty than difficulty, and therefore may require argument, but will not endure much argument. But to speak plainly to my understanding as the case hath no equity in it (I might say piety) so it hath no great doubt in law.

First, therefore, this 'tis that I affirm; that the clause "so that," *ita quod*, containing the recompense, governs the clause precedent of the power, and that it makes it wait and expect otherwise than as by way of inception; but the effect and operation is suspended till that part also be performed; and if otherwise, then I say plainly, you shall not construe by fractions, but the whole clause and power is void, not *in tanto*, but *in toto*. Of the first of these I will give four reasons.

The first reason is, that the wisdom of the law useth to transpose words according to the sense, and not so much to respect how the words do place,[1] but how the acts, which are guided by those words, may take place.

Hill and Graunger's case. Plowd. f. 171.

Hill and Graunger's case, Comment. 171. A man in August makes a lease, rendering ten pounds rent yearly to be paid at the feasts of Annunciation and Michaelmas. These words shall be inverted by law, as if they had been set thus, at Michaelmas and the Annunciation, for else he cannot have a rent yearly; for there will be fourteen months to the first year.

[1] The MS. has "take place," with the first word struck out. The editions have retained it, but I think erroneously.

Fitzwilliams's case, 2 Jac. Co. pa. 6. f. 33. Fitzwilliams's case. 6 Co. 33. It was contained in an indenture of uses, that Sir William Fitzwilliams should have power to alter and change, revoke, determine, and make void the uses limited. The words are placed disorderly; for it is in nature first to determine the uses, and after to change them by limitation of new. But the chief question being in the book whether it might be done by the same deed, it is admitted and thought not worth the speaking to, that the law shall marshal the acts against the order of the words; that is, first to make void, and then to limit.

So if I convey land, and covenant with you to make farther assurance, so that you require it of me; there, though the request be placed last, yet it must be acted first.

So if I let land to you for a term, and say further it shall be lawful for you to take twenty timber trees to erect a new tenement upon the land, so that my bailiff do assign you where you shall take them; here the assignment, though last placed, must precede. And therefore the grammarians do infer well upon the word "period," which is a full and complete clause or sentence, that it is *complexus orationis circularis:* for as in a circle there is not *prius* nor *posterius*, so in one sentence you shall not respect the placing of words, but though the words lie in length, yet the sense is round, so as *prima erunt novissima et novissima prima.* For though you cannot speak all at once, so yet you must construe and judge upon all at once.

To apply this; I say these words *so that*, though *loco et textu posteriora*, yet they be *potestate et sensu priora;* as if they had been penned thus, that it shall be lawful

for Sir Thomas Stanhope, so that he assure lands, &c. to revoke; and what difference between "so that he assure, he may revoke," or "he may revoke, so that he assure:" for you must either make the "so that" to be precedent or void, as I shall tell you anon. And therefore the law will rather invert the words than pervert the sense.

But it will be said, that in the cases I put it is left indefinite, when the act last limited shall be performed, and so the law may marshal it as it may stand with possibility; and so if it had been in this case no more but, "so that Sir Thomas or John should assure new lands," and no time spoken of, the law might have intended it precedent; but in this case it is precisely put to be at any time within six months after the declaration, and therefore you cannot vary in the times.

To this I answer that the new assurance must be indeed in time after the instrument or deed of the declaration, but on the other side, it must be in time precedent to the operation of the law by determining the uses thereupon. So as it is not to be applied so much to the declaration itself, but to the warrant of the declaration, — *it shall be lawful, so that* &c. And this will appear more plainly by my second reason, to which now I come; for as for the cavillation upon the word *immediately*, I will speak to it after.

My second reason therefore is out of the use and signification of this conjunction or bond of speech, *so that:* for no man will make any great doubt of it, if the words had been *si*, — "if Sir Thomas shall within six months of such declaration convey," — but that it must have been intended precedent; yet if you mark it well, these words *ita quod* and *si*, howsoever in pro-

priety the *ita quod* may seem subsequent and the *si* precedent, yet they both bow to the sense.

So we see in 4 Edw. VI. Colthurst's case. A man leaseth to J. S. a house, *si ipse vellet habitare et residens esse:* there the word *si* amounts to a condition subsequent, for he could not be resident before he took the state; and so *via versa* may *ita quod* be precedent, for else it must be idle and void. But I go farther, for I say *ita quod*, though it be good words of condition, yet more properly it is neither condition precedent, nor subsequent, but rather a qualification, or form, or adherent to the acts whereto it is joined, and made part of their essence; which will appear evidently by other cases. For allow it had been thus, *so that the deed of declaration be enrolled* within six months, this is all one as by deed inrolled within six months, as it is said in Diggs's case, 42 Eliz. f. 173., that "by deed indented to be inrolled" is all one with "deed indented and inrolled:" it is but a *modus faciendi*, a description, and of the same nature is the *ita quod.* So if it had been thus, it shall be lawful for Sir Thomas to declare, *so that the declaration be* with the consent of my lord chief justice, is it not all one with the more compendious form of penning, that Sir Thomas *shall declare with the consent of my lord chief justice?* And if it had been thus, so that Sir John within six months after such declaration shall obtain the consent of my lord chief justice, should not the uses have expected? But these you will say are forms and circumstances annexed to the conveyance required; why surely any collateral matter coupled by the *ita quod* is as strong. If the *ita quod* had been, that Sir John Stanhope within six months should have

Colthurst's case. Plowd. f. 21.

Digg's case, 1 Co. 178.

paid my lady one thousand pounds, or entered into bond never more to disturb her, or the like; all these make but one entire idea or notion, how that his power should not be categorical, or simple at pleasure, but hypothetical, and qualified, and restrained, that is to say, not the one without the other; and they are parts incorporated into the nature and essence of the authority itself.

The third reason is, the justice of the law in taking words so as no material part of the parties' intent perish. For as one saith, *præstat torquere verba, quam homines*, better wrest words out of place than wrest my Lady Stanhope out of her jointure, that was meant to her. And therefore it is elegantly said in Fitzwilliams's case which I vouched before; though words be contradictory, and (to use the phrase of the book) *pugnant tanquam ex diametro*, yet the law delighteth to make atonement, as well between words as between parties, and will reconcile them, so as they may stand, and abhorreth *vacuum*, as well as nature abhorreth it; and as nature, to avoid *vacuum*, will draw substances contrary to their propriety, so will the law draw words. Therefore saith Littleton, if I make a feoffment *reddendo* rent to a stranger, this is a condition to the feoffor, rather than it shall be void; which is quite cross; it sounds a rent, it works a condition; it is limited to a third person, it inureth to the feoffor. And yet the law favoureth not conditions, but to avoid *vacuum*.

45 E. 3. So in the case of 45 E. III. a man gives land in frank-marriage, the remainder in fee. The frank-marriage is first put, and that can be but by tenure of the donor; yet rather than the remainder should be void, though it be last placed, the frank-

marriage being but a privilege of estate shall be destroyed.

So 30 H. VI. Tressham's case. The King granteth a wardship, before it fall; good, because it cannot inure by covenant, and if it should not be good by plea, as the book terms it, it were void: so that, no not in the King's case, the law will not admit words to be void.

So then the intent appears most plainly, that this act of Sir John should be *actus geminus*, a kind of twin[1] to take back, and to give back, and to make an exchange, and not a resumption; and therefore upon a conceit of repugnancy, to take the one part which is the privation of my lady's jointure, and not the other which is the restitution or compensation, were a thing utterly injurious in matter, and absurd in construction.

The fourth reason is out of the nature of the conveyance, — which is by way of use, and therefore ought to be construed more favourably according to the intent, and not literally or strictly: for although it be said in Freine and Dillon's case, and in Fitzwilliams's case, that it is safe so to construe the statute of 27 H. VIII. as that uses may be made subject to the rules of the common law, which the professors of the law do know, and not leave them to be extravagant and irregular; yet if the late authorities be well marked, and the reason of them, you shall find this difference, that uses, in point of operation, are reduced to a kind of conformity with the rules of the common law; but that, in point of exposition of words, they retain somewhat of their ancient nature, and are ex-

[1] "Twyne" in the MS., which the editions print "twine." I cannot myself attach any meaning to this reading, and therefore, guided by the preceding *geminus*, have printed "twin."

pounded more liberally according to the intent; for with that part the statute of 27 doth not meddle. And therefore if the question be, whether a bargain and sale upon condition be good to reduce the state back without an entry, or whether, if a man make a feoffment in fee to the use of John a Style for years, the remainder to the right heirs of John a Downe, this remainder be good or no; these cases will follow the grounds of the common law for possessions, in point of operation; but so will it not be in point of exposition.

For if I have the manor of Dale and the manor of Sale, lying both in Vale, and I make a lease for life of them both, the remainder of the manor of Dale and all other my lands in Vale to John a Style, the remainder of the manor of Sale to John a Downe, this latter remainder is void, because it comes too late, the general words having carried it before to John a Style. But put it by way of use; a man makes a feoffment in fee of both manors, and limits the use of the manor of Dale and all the other lands in Vale to the use of himself and his wife, for her jointure; and of the manor of Sale to the use of himself alone. Now his wife shall have no jointure in the manor of Sale, and so was it judged in the case of the manor of Odiam.[1]

The case of the manor of Odiam.

And therefore our case is more strong, being by way of use; and you may well construe the latter part to control and qualify the first, and to make it attend and expect; nay, it is not amiss to see the case of Peryman, 5 Co. f. 84. 41 Eliz. Coke, p. 5, f. 84. where by custom a livery may expect; for the case was, that in the manor of Portchester the custom was, that a feoffment

[1] Probably Odiham.

of land should not be good, except it were presented within a year in the court of the manor; and there ruled that it was but *actus inchoatus*, till it was presented. Now if it be not merely against reason of law, that so solemn a conveyance as livery, which keeps state (I tell you), and will not wait, should expect a farther perfection, *a fortiori* may a conveyance in use or declaration of use, receive a consummation by degrees, and several acts. And thus much for the main point.

Now for the objection of the word *immediate;* it is but light and a kind of sophistry. They say that the words are, *that the uses shall rise immediately after the declaration*, and we would have an interposition of an act between, *viz:* that there should be a declaration first, then a new assurance within the six months, and lastly the uses to rise: whereunto the answer is easy; for we have showed before that the declaration and the new assurance are in the intent of him that made the conveyance, and likewise in eye of law, but as one compounded act. So as *immediately after the declaration* must be understood of a perfect and effectual declaration, with the adjuncts and accouplements expressed.

So we see in 49 E. III. f. 11. if a man be attainted of felony that holds lands of a common person, the King shall have his year, day, and waste: but when? Not before an office found. And yet the words of the statute of *prærogativa regis* are, *Rex habebit catalla felonum*, et *si ipsi habent liberum tenementum* statim capiatur *in manus domini, et rex habebit annum, diem et vastum:* and here the word *statim* is understood of the effectual and lawful time, that is, after office found.

49 E. 3. f. 11.

2 H. 4. f. 17. So in 2 H. IV. f. 17. it appears that by the statute of Acton Burnell, if the debt be acknowledged, and the day past, that the goods of the debtors shall be sold *statim*, in French *maintenant;* yet nevertheless this *statim* shall not be understood, not before the process of law requisite passed, that is, the day comprised in the extent.

27 H. 8. f. 19. So it is said 27 H. VIII. f. 19. by Audley the Chancellor, that the present tense shall be taken for the future; *a fortiori* say I the immediate future tense may be taken for a distant future tense. As if I be bound that my son being of the age of twenty-one years shall marry your daughter, and that he be now of twelve years; yet this shall be understood, when he shall be of the age of twenty-one years. And so in our case, *immediately after the declaration* is intended, when all things shall be performed that are coupled with the said declaration.

But in this I doubt I labour too much; for no man will be of opinion that it was intended that the Lady Stanhope should be six whole months without either the old jointure or the new; but that the old should expect until the new were settled without any *interim*. And so I conclude this course of atonements (as Fitzwilliams's case calls it); whereby I have proved that all the words, by a true marshalling of the acts, may stand according to the intent of the parties.

I may add *tanquam ex abundanti*, that if both clauses do not live together, they must both die together; for the law loves neither fractions of estates nor fractions of constructions. And therefore in Jermin and Askew's case, 37 Eliz., a man did devise lands in tail with proviso, that if the devisee did at-

Jermin and Ascough's case. 37 Eliz.

tempt to alien, his estate should cease, as if he were naturally dead. Is it said there that the words *as if he were naturally dead* shall be void, and the words *that his estate shall cease*, good? No, but the whole clause shall be void. And it is all one reason of a *so that*, as of an *as if*, for they both suspend the sentence.

So if I make a lease for life, upon condition he shall not alien, nor take the profits, shall this be good for the first part, and void for the second? No, but it shall be void for both.

So if the power of declaration of uses had been thus penned; that Sir John Stanhope might by his deed indented declare new uses, so that the deed were inrolled before the Mayor of St. Albans, who hath no power to take inrolments; or so that the deed were made in such sort, as might not be made void by Parliament; in all these and the like cases the impossibility of the last part doth strike upwards, and infect and destroy the whole clause. And therefore, that all the words may stand is the first and true course; that all the words be void, is the second and probable; but that the revoking part should be good, and the assuring part void, hath neither truth nor probability.

Now come I to the second point, how this value should be measured; wherein methinks you are as ill a measurer of values as you are an expounder of words. Which point I will divide, first considering what the law doth generally intend by the word *value;* and secondly to see what special words may be in these clauses, either to draw it to a value of a present arrentation, or to understand it of a just and true value.

The word *value* is a word well known to the law, and therefore cannot be (except it be willingly) misun-

derstood. By the common law there is upon a warrant a recovery in value. I put the case therefore that I make a feoffment in fee with warranty of the manor of Dale, being worth twenty pounds *per annum*, and then in lease for twenty shillings. The lease expires; (for that is our case, though I hold it not needful;) the question is whether upon an eviction there shall not be recovered from me land to the value of twenty pounds.

So if a man give land in frank-marriage then rented at forty pounds and no more worth; there descendeth other lands, let perhaps for a year or two for twenty pounds, but worth eighty pounds: shall not the donee be at liberty to put this land in hotchpot?

So if two parceners be in tail, and they make partition of lands equal in rent, but far unequal in value; shall this bind their issues? By no means. For there is no calender so false to judge of values as the rent, being sometimes improved, sometimes ancient, sometimes where great fines have been taken, sometimes where no fines; so as in point of recompense you were as good put false weights into the hands of the law, as to bring in this interpretation of value by a present arrentation. But this is not worth the speaking to in general: that which giveth colour is the special words in the clause of revocation, that the twenty pounds' value should be according to the rents then answered, and therefore that there should be a correspondence in the computation likewise of the recompense. But this is so far from countenancing that exposition, as, well noted, it crosseth it; for *opposita juxta se posita magis elucescunt:* first, it may be the intent of Sir Thomas in the first clause was double, partly to exclude any land

in demesne, partly because knowing the land was double, and as some say quadruple, better than the rent, he would have the more scope of revocation under his twenty pounds' value.

But what is this to the clause of recompense? First, are there any words *secundum computationem prædictam?* There are none. Secondly, doth the clause rest upon the words *similis valoris?* No, but joineth *tantum et similis valoris.* Confound not predicaments; for they are the mere-stones of reason. Here is both quantity and quality. Nay he saith farther, within the same towns. Why? Marry it is somewhat to have men's possessions lie about them, and not dispersed. So it must be as much, as good, as near: so plainly doth the intent appear, that my Lady should not be a loser.

For the point of the notice, it was discharged by the Court.

THE ARGUMENTS

ON THE

JURISDICTION OF THE COUNCIL OF THE MARCHES.

PREFACE.

THESE arguments were delivered in the course of a contest of some historical interest, which was carried on, in the Courts, in Parliament, and out of doors, through the greater part of James's reign, and indeed earlier. The dispute, in its legal aspect, is closely connected with large constitutional questions, which then occupied the minds of men; and the discontent which sustained it may, perhaps, be deemed as much a symptom of the general ferment which was everywhere souring the relations of the Court and country, as directly ascribable to substantial grievances inflicted by the Council on those subject to its jurisdiction: nevertheless the matter has a separable history of its own, a summary of which may not be out of place as an introduction to these arguments.[1]

The Court of "the President and Council in the Dominion and Principality of Wales and the Marches of the same," originating in earlier and more disturbed

[1] A large mass of materials are collected in a volume of the Cotton MSS. Vitellius, C. i. devoted to this subject and referred to by Mr. Hallam. See also Cott. MSS. Titus, B. viii. Many of the same documents, and a great number of others are in the State Paper Office. Mr. Spedding had copied some of the most important, and made extracts from others, before I began my task: the publication of the Calendar has made it easy for me to glean some further information.

times, was confirmed by Parliament 34 35 Hen. VIII. c. 26., one of a series of statutes for regulating that province, and giving large legislative powers to the King for that purpose. It was armed with discretionary power over such matters as should be assigned to it by the King, "as theretofore had been accustomed and used."

The more noted Council of York had been erected some years earlier without either statute or custom to support it; as had also a third Provincial Council for the Western Parts, which, however, was soon dropt, owing, as Coke tells us,[1] to strong local opposition. All three Councils are recognised as a meritorious cause of expense to the King in the Subsidy Act of 32 Hen. VIII. c. 50.,[2] before the Welsh Act was passed, the point specially singled out for praise being the cheap and speedy justice administered in them to rich and poor. The enactment in 34 Hen. VIII. was therefore not occasioned by any doubt or hesitation of the King about erecting such Courts generally by his own authority, but probably by the necessity for distinctly mentioning what old Institutions were still to stand, amidst so much innovation taking place in Wales: and the question remains quite open, whether the four English Shires with which these arguments are concerned, or Chester and Bristol which had at first been subject to the Council, were in fact at the time conceived to be comprised in the words of the statute.

The sturdiest constitutionalists have admitted the

[1] 4th Inst. 246.

[2] This Act, which is not inrolled in Chancery, seems to have escaped notice while the controversy was going on in James's reign; and, strangely enough, Coke, who was aware of it, at all events, when writing the 4th Institutes, cites it only as recognising the existence of the Councils of York and the West.

benefits which in certain stages of English society were obtained from such a tribunal as the Star Chamber, curbing local combination, oppression, and corruption: an equitable temperament of the Common Law, as administered by our lawyers, could hardly be dispensed with: the economy of time and costs which may be secured by means of local Courts is now a trite subject: and I know no reason why Henry and his ministers should not be supposed to have meant honestly when these Provincial Courts were established.[1] Nevertheless, without dwelling on the validity of the motives which caused the constant Parliamentary opposition to their great Metropolitan exemplars, it is not difficult to picture to ourselves the abuses of every sort that might gather head in such Courts, when acting at a distance from central opinion and control, under the presidency of noblemen chosen by Court favour and not generally trained in legal habits; exercising a censorial as well as a strictly criminal jurisdiction: unfettered by definite rules of proceeding; and conducting inquiries by examination of the supposed offender, aided in cases of treason and felony by torture in the discretion of the Court;[2] in civil questions staying, setting aside, and

[1] The tenor of the instructions to the Welsh Council, when the Princess Mary was sent down to the Principality, before the Act of Parliament Cott. MSS. Vit. (C. i.), and the authority to the Northern Council, as stated by Coke (4 Inst. 245), lead fairly to the inference that the discretionary powers, criminal and civil, were at first intended to supplement, not to supersede the Common Law procedure.

[2] This power is openly and without circumlocution given in a series of instructions, including two consecutive ones, the last in 1602, revised by Coke as Attorney-General. Those of 1607 do not appear from the abstract of them to have contained, and those of 1617 certainly omitted this clause; but perhaps the thing may have been understood by the phrase, "all other good ways and means in their discretion as heretofore has been used by the Council." Rym. Fœd. Nov. 12th, 1617.

inverting, within ill-defined limits, the proceedings and principles of the ordinary Courts; and partly dependent for its support on the fines which it imposed for contempt and offences, and on fees ascertained by a custom of which the lower officials were the ordinary interpreters.

Orders for reformation of the Court, which were issued by Lord Burleigh in 1579, and instructions[1] to the President, Lord Pembroke, in 1586, are official recognitions of the existence of maladministration such as might have been surmised: delays, excessive costs, encroachment on the Common Law, extortion by means of fining, and an exercise of the inquisitorial powers of the Court, which even in those days was thought vexatious. It seems reasonable to assume that these abuses were, in part at least, the cause of the efforts which during the first half of Elizabeth's reign were made to have the territorial jurisdiction of the Council restricted; though we must no doubt also take account of the natural resentment of the English at being coupled with the Welshmen, and of disputes of privilege with the Common Law Judges and other local Courts. Chester, so far as appears, was exempted on occasion of a conflict of jurisdiction with the Palatine Courts; but Bristol obtained exemption as a favour to the inhabitants, and Worcester and the other Shires attempted and failed, both by legal proceedings and also by petition, to do the same. In a short Memoir,[2] apparently the one on which the Queen acted in refusing this request, the question is argued very temperately, and entirely on the ground of expediency:

[1] Cott. MSS. Titus, B. viii.
[2] Cott. MSS. Vit. C. i. undated.

the conclusion is that the Court should be reformed, but not restricted.

After the reformation of the Council, we hear no more of it until Lord Zouch became president. He was first sent down at the close of Elizabeth's reign, and his Commission was renewed on James's accession. In October, 1602, we casually learn[1] that "he begins to know and use his authority;" that he was slighting the Chief Justice of Chester, the permanent legal member of the Council; and that "his jurisdiction is already brought in question in the Common Pleas, and the Chief Justice of that Bench" — who would be Anderson — "thinks that Gloucestershire, Herefordshire, &c. are not within his Circuit."[2]

The commencement of the dispute we are here concerned with was *Fairley's Case* in the King's Bench, reported shortly, and it seems imperfectly, by Croke, Trin. T. 2 Jac. (1604). Fairley occupied land which he claimed to hold under a lease from a deceased copyholder; the widow claimed to re-enter and avoid the lease, and she obtained an order from the Council that Fairley should "suffer her to have possession till the Court of the Manor had tried the right." Fairley was imprisoned for disobedience to this order, and thereupon sued out a writ of *Habeas Corpus cum causâ*, from the King's Bench. This writ was disobeyed by the Council "for that none of that nature had ever

[1] Harl. MSS. 5353. He is said to have thrown down the cushion laid, according to usage, for the Chief Justice of Chester beside his own saying, "one was enough for that place."

[2] I do not know of any Report of proceedings in the Common Pleas at this time, but a quarrel was on foot between the two Courts as early as 1592. 1 Anderson's Rep. 279.

taken place."[1] In the paper from which I take this account it is said it was ultimately not denied by the Common Law Judges that this order "was just." For aught that appears the widow may have been in the right; but I doubt whether the Judges can have said that an order disturbing the possession until the right should be tried was a proper one to make; though they may well have admitted the King's Bench could not meddle with it on the merits, if the cause was within the jurisdiction of the Council.

The character of the King would, I suppose, have been a sufficient impediment, under any circumstances, to have prevented the question of jurisdiction from being brought in a course of legal decision up to the House of Lords,[2] though that tribunal was favourably constituted for upholding the Prerogative and free from

[1] There was a precedent for one issuing in Lord Pembroke's time, but it is said it was not returned. S. P. O. Domestic, James I. vol. x. 86. In this account of Fairley's case I have followed the authority of a memoir in the State Paper Office, which stands next before the last cited paper. It is entitled "A view of the Differences in question betwixt the King's Bench and the Council in the Marches;" and I take it to be addressed to the Privy Council, or to Cecil, on behalf of the Welsh Council, after the discussion had proceeded some way. I concur with Mr. Spedding in thinking that it bears evident marks of having been of Bacon's drawing or settling.

[2] It may be thought that such a course would scarcely have occurred to any one in those days. But if I do not misapprehend the application of a remark made by Coke at the Council Board on June 15th, 1608, (Lansd. MSS. 160.) in a discussion on the question of Prohibitions against these Provincial Courts, that "the Lords of the Upper House may determine against the Judgment of the King's Bench or Common Pleas," he contemplated or suggested such a solution: and at an earlier stage, (not later, I think, than 1606,) a memorial on behalf of the Welsh Council vehemently deprecated some plan which "it was given out" the Judges had agreed upon for empanelling a jury to try the question of the four shires; whether a declaration in prohibition, or an action for false imprisonment, or what other course was intended, does not appear, but I presume there would have been some record on which error might have been brought. S. P. O. vol. x. 88.

the professional bias towards the Common Law, which no doubt existed in the Courts at Westminster. It was, however, by Lord Zouch's act that the dispute was first submitted to the Privy Council and made a matter of State.

It does not appear who had been engaged in Fairley's cause while yet a private one. At this stage we find Coke, Attorney General, acting on behalf of the King's Bench, and Sir John Croke, who seems to have been officially connected with the Council of the Marches,[1] and Bacon engaged for the Council. Several conferences were held between them, and there is extant what purports to be the result of these conferences,[2] involving an admission of the general right and duty of the King's Bench to see that courts of this kind kept within their due limits, with stringent provisions against abuse of the writ of *Habeas Corpus;* leaving in dispute only the question of the territorial extent of the Council's jurisdiction, and even as to this suggesting a Parliamentary confirmation or extension to them of such power as the Star Chamber exercised. But either this was a mere draft by Coke and never approved by Croke and Bacon, or these latter went further in the way of conciliation than their principals were willing to follow them,[3] and it was disavowed or retracted. It seems that this point of the four English shires was not present to the mind of the King's Bench

[1] "Continual Assistant." See S. P. O. vol. xxxi. 31.; from which it appears that he resigned this office in or before 1607.

[2] Harl. MSS. 6797.

[3] See another copy in Cott. MSS. Vit. c. 1. with marginal notes retracting or nullifying the admissions, and see also S. P. O. vol. x. 87., in which the substance of these marginal notes alone appears under a heading which corresponds with that of the Harl. MS.

when they awarded and maintained their writ; but we have seen that others had raised it long before.

Coke's account of what followed[1] is that in Michaelmas Term, 2 Jac. (1604), all the Justices and the barons of the Exchequer were assembled by command of the King, and after hearing counsel on divers days, and upon mature deliberation, resolved *unâ voce* that the said four counties were not within the jurisdiction of the Council, and that, inasmuch as they had a limited authority, a prohibition might be granted if they proceeded in any matter beyond it: that thereupon the King ordered the Lord President's commission to be reformed; whereupon Lord Zouch resigned; and yet the commission was not afterwards reformed in all points as it ought to have been.

But this summary, though it may be substantially accurate, at all events compresses the events too much. The judges were certainly consulted, and gave an opinion unfavourable to the jurisdiction over the English shires; and the King's Bench thereupon followed up their original judgment by process against the officer who had Fairley in custody, and (it seems) against other parties, after the intemperate fashion in which it was in those days customary to vindicate authority. Some angry letters from Lord Zouch to Cecil in 1605 countenance the statement that the Privy Council at first took part against him;[2] and there is good reason to believe that, from illness and disgust combined, he thenceforth ceased from the active duties of his place, and that the authority of the Welsh Council was prac-

[1] 4 Inst. 242.

[2] See also a letter from Sir Herbert Croft, Dec. 19th, 1614, in which he speaks of Lord Ellesmere as having been originally against Lord Zouch.

tically in abeyance for some time within the four shires. It also appears that some new instructions were drawn up, whether issued or not, which may be those here mentioned by Coke.[1] But Lord Zouch is spoken of as still in office in August, 1606.[2]

In the meantime, he and the Welsh Council were not inactive, and besides collecting precedents and enforcing legal arguments, pressed on the King and his advisers considerations of policy likely to prevail with them. It was in substance urged, that to give up the English shires because they were alleged not to be within the Act of Parliament, was to admit that the jurisdiction of the Court rested only on statute law; that the royal prerogative on which it had rested from the time of Edward IV., backed by the usage of four successive reigns after the Statute, went for nothing, and that the Crown had been usurping during all that time, and all the sentences and judgments given by the Council within those shires had been *coram non judice:* that if this were so, it would go hard with the Council at York, founded by mere prerogative; and other Courts might follow. The real advantages of local and summary tribunals were not overlooked: the inconvenience of severing the resort of the inhabitants of the two sides of the Borders to the same Civil Courts was especially urged; the turbulent and Popish[3] inclination of the gentry of those parts was

[1] S. P. O. vol. xxxi. 31. It is a memorandum on the differences between these Instructions and the "present" ones, which latter are clearly those issued to Lord Eure in August, 1607. The two are represented as agreeing in the provisions for governing the English shires.

[2] In a letter of Carleton's of that date in S. P. O.

[3] Sir H. Croft, the principal advocate for the shires, turned Papist in 1607, in the thick of the contest: *Burke's Peerage and Baronetage.* I pre-

touched upon; and the agitation was attributed sometimes to their preference of trial by juries whom they could influence or intimidate, and to the clannish following by the common people of the gentry's lead, — sometimes to the increasing number of attorneys hungry for costs: [1] and the usual cry was raised, that any change would lead to a revolution.

Some of these considerations might, I think, not unreasonably have produced in a cautious servant of the Crown, at any time, such a feeling of hesitation as is indicated by some marginal annotations by Cecil, on one of the numerous memoirs still extant,[2] which he sums up in the words, *antiquæ substructiones nec facile destruuntur, nec solæ ruunt.* But both these and other topics were, of course, dwelt on in the language and with the feelings of the times. The independence and sanctity of the royal prerogative (at least "of this kind,")[3] were enlarged upon; as was the personal disgrace that would ensue to the King for yielding that which the Tudors had upheld: and the danger of giving a triumph to the already exorbitant and encroaching course of the Common Law Courts was enhanced by a reference to the then recent action of the Parliament of Paris.[4]

sume this authority is conclusive on such a matter, but I have come across no contemporary allusion to the fact.

[1] It may be mentioned as a stray statistical fact that there were reckoned to be about fifty attorneys in each of three of the counties, and a number I could not decipher in the fourth.

[2] S. P. O. vol. xxxi. 35, 36. Probably early in 1608, as the Calendar places it.

[3] This qualifying phrase occurs in the Memoir first cited in this preface, and reminds one of a similar one in the *Maxims of the Law.* Reg 19.

[4] In the same Memoir. So late as in July, 1608, Bacon seems to have in private inclined to the opinion, that in the general struggle then going on the encroachments had been more on the part of the Local Courts. — *Commentarius Solutus.*

While all this was going on in Council, Parliament met; and in March, 1605–6, a bill passed the House of Commons "for explanation of the 34 and 35 Hen. VIII.," declaring the English shires to be exempt. This failed, I suppose, in the Lords; and another bill was passing through the Commons in the following May, with the same title, when the King gave audience to some members, and made a gracious speech. The next day, on the motion of Sir Herbert Croft, the member for Herefordshire and principal promoter of the cause of the shires, the House resolved "to rest upon His Majesty's grace for the execution of the law;" and the bill was dropt.

We have no record of the terms of the King's promise on this occasion, nor can we exactly fix the order of the steps which were taken for fulfilling or breaking it. Bacon became Solicitor General in July, 1607. Seeing how, from first to last, he was employed in this affair, and the reputation he had of one that had "laboured much against the shires," there can be little doubt that he was consulted at this stage, but we are quite uncertain to what extent the influence of his advice may have prevailed. There is extant in the State Paper Office the draft of a proclamation, which Mr. Spedding informs me is in the handwriting of a person usually employed by Bacon and corrected by himself, which I should be inclined to assign to near this date. It was intended to accompany some "reformed" instructions for both the Welsh and the Northern Councils, "reduced to those limits and restrictions" which were thought fit, and to be obeyed "within the precincts of the jurisdiction of the Council as they should be set down by the said instructions." There is no further

indication of what those instructions were; but the policy of this proclamation differs in one very material point from that actually pursued, inasmuch as it contemplated that the instructions, so far as they "concerned ordinary justice," should be recorded for public inspection. In other respects, its general purport was to insist on the King's resolve, neither to extend nor withdraw the prerogative of the Crown as exercised by his predecessors on any pretence of legal objections, or except "by the advice of the three Estates in Parliament," to whom the King would "always be ready to give a gracious hearing and respect." While thus distinctly basing both Councils on the ground of prerogative fortified by ancient usage, we must suppose it was intended to introduce such modifications and reforms in practice as might conciliate and extinguish the existing opposition.[1]

No such Proclamation appears to have issued; but in August, 1607, Lord Eure was appointed President, with Instructions of which we have only an abstract.[2]

[1] There is in the S. P. O. vol. x. 88. a short paper written in a very moderate spirit, undated, which I incline to connect with this draft Proclamation, and to consider as substantially embodying Bacon's advice to his clients and to Salisbury. It insists on usage and precedents as proving that the four shires were included in the Marches: it urges that the Common Law Judges are not bound by their oath to issue Prohibitions to other Courts where there are reasons of State or of convenience against it: it insists on the utility of the Welsh Council, and alleges that though the Statute allows it to judge of matters of inheritance, yet the King's instructions do not; and it rather suggests than insists that, besides the Statutory power, the Crown has an inherent right and duty to see to the "Provincial and equal distribution" of Courts of Justice: and it ends with proposing, "for the determining of all the controversy" that the King should grant a commission for these Shires "such as he granteth for York, and as former Kings granted for Wales and the Marches before the statute was made" as to which see note in p. 97.

[2] Cotton MSS. Vitell. c. i.

It appears by the Memorandum in the State Paper Office, already referred to, that Coke was one of the Board of Council who attended their drawing up; but we do not know what part he took further than procuring an increase to the salary of the Chief Justice of Chester.

In these Instructions the extraordinary criminal powers of the Council were confined to Wales, and a mere Commission of Oyer and Terminer, and directions to keep four general terms in the year, were given for the four shires. Then, with a recital that a question had been made by divers inhabitants whether the four Counties and their Cities were part of the Marches, "in respect of long practice used by the President and Council there, and for ease of the poorer sort in these remote places, not fit to be compelled to come to Westminster for petty causes," power was given to hear and determine all matters of debt and trespass where the damage was laid under 10*l.* Fines were to be levied as heretofore, but if any could not be levied in the four Counties, they were to be estreated into the Exchequer.

A less concession than this might have been satisfactory, perhaps, in a Parliamentary settlement, as the passions of the House of Commons seem never to have been engaged in the controversy. But when the proceedings in the Commons were stayed in reliance on the King's "execution of the Law," it was fully understood that the Judges had declared the Law to be with the Shires, and that any civil jurisdiction, or any powers beyond those of a Commission of Oyer and Terminer, were illegal. To submit, therefore, even to the limited 10*l.* jurisdiction was, in principle, to give

up the strength of their case, and to render illegitimate all remonstrance against any subsequent encroachment of the Crown, until (as in fact happened) the whole obnoxious authority of the Council might be restored.

Besides this Constitutional ground of opposition, which was the one mainly insisted on, and the apparent breach of faith on the part of the King, there were causes enough of irritation in the conduct of the matter by the Privy Council and Lord Eure, although the latter asserts, (what his opponents contradicted, and what I cannot either confirm or deny,) that his administration was free from such harshness and arrogance as had provoked hostility towards his predecessor.

Sir Herbert Croft was put out of the Commission of Lieutenancy and of the Peace, not, it is said, without much difference of opinion in the Privy Council;[1] and Lord Eure attributes his subsequent opposition to vexation at this slight. The terms of the new Instructions were, as usual, kept private;[2] and Lord Eure when questioned on the subject seems to have been purposely ambiguous. By his own account he "answered that his Majesty had not exempted the four English Shires from the sole jurisdiction of this Court," and promised

[1] Carleton, Sept. 16th, calls it "out of the Commission of the Council of Wales," which I suppose is a loose expression. I take the fact from Lord Eure and official returns. It is possible it was as Papist, and not in consequence of his Parliamentary conduct, that he was thus disgraced. But Sir Roger Owen, who according to Carleton was at the same time displaced, was also a prominent advocate on the same side. See Parliamentary debates, and Sir H. Croft's letter to Somerset, Dec. 19th, 1614.

[2] Bacon's Proclamation proves the custom, and Lord Eure's own letter, Feb. 6th, 1607-8, shows it had not been departed from. I have no doubt the contents of the Instructions became known in the course of time — perhaps by letters from the Privy Council to the Sheriffs, enforcing obedience, suggested by Lord Eure in Feb. 1607-8, and apparently written in the following August. See Eure's letter of Aug. 7th.

"judicial sentence of such causes as by Instructions we should admit;" and by way of comment on this information, a complaint being made about the conduct of a magistrate (and therefore not within their jurisdiction) in a matter concerning a tenant of Sir H. Croft, the Council called the parties before them, and, apparently without disclosing that in fact they had no power, got them to submit to some course of arbitration. Sir Herbert took up the case and obtained a Prohibition.

The result of all this was, that before Christmas a sturdy resistance was organised against the Council: in Herefordshire, the Bishop and twenty-six of the principal gentry joined in urging Sir H. Croft to continue his exertions to free them; and in Worcestershire the Sheriff, Sir John Packington, a veteran courtier of Elizabeth's time, supported his under-sheriff in refusing to obey the precepts of the Court. Lord Eure wrote more than once to Salisbury describing the untenable position in which he was placed, and urging that the powers of the Council in the English Shires should either be raised to something like what they had been, or else altogether given up, and tendered his own resignation if his request were set aside.

It was determined that the question should be taken up by the Privy Council. In April, 1608, the Chief Justice of Chester proceeded to London with records tending to make out the jurisdiction of the Council, and Lord Eure was in readiness to follow when required. The more general question — the first one that had been mooted in Fairley's case — of the right and duty of the King's Bench to issue Prohibitions to other courts, and its extent, was assuming importance, and the "cause of the four Shires," that of the Coun-

cil of York, and this general question came to be considered together. Bacon, as Solicitor General, was of course concerned in the matter; but up to July he seems to have had no confidential communication of the King's views, to have thought a Parliamentary settlement desirable, but to have guessed that the dignity of the Prince of Wales would be thought at Court to be affected if the Welch Council should have its territorial limits restricted.[1]

It was out of a decision taken at a meeting of the Privy Council on Nov. 6th, that the arguments here reported arose. The King propounded the question, "whether the article of the Instructions touching hearing causes within the four shires under 10*l.* be agreeable to the law." Coke, now Chief Justice of the Common Pleas and the mouthpiece of the Judges, asked for time and the opportunity of hearing counsel before giving an answer. A somewhat indecorous altercation followed between him and the King; and ultimately it was settled this question, and, it would seem, some other ones touching both Councils, should be argued before the Judges; that the Presidents of Wales and York should instruct their own counsel; and "the King's own counsel should inform the Judges of his desires;" and the Judges were to "hear what any could say against the same, and to return their report what they had heard on both sides, and leave the judgment to the King."[2]

The matter was argued for six days, of which four were taken up by the counsel for the Crown and the

[1] *Commentarius Solutus qu. supr.* The King did think in 1614 that the matter concerned the Prince.

[2] Lansdowne MSS. 160.

Council. I suppose that the extent of the prerogative was not considered to be referred to the Judges, or else it was disposed of before the arguments we have were commenced; and probably no one will now take an interest in the mere question of the legal interpretation of the statute, checked or assisted by the evidence of anterior and contemporary usage: if any do, he will find other arguments on each side in the Cotton MSS. and the State Paper Office. I do not profess to have studied these documents very closely; but the case seems to me very arguable on both sides as the matter then stood: and perhaps the Subsidy Act already referred to, to which I believe no allusion occurs, gives equal handle to either side. It speaks of the Council as established "in the Marches of Wales and the Shires thereunto adjoining." This was after the destruction of the Lordships Marchers of which Bacon makes so much: it therefore helps those who contend that "the Marches" had still their old meaning and were distinguished from the Counties. But then it shews that at the time when it was enacted that the Council should "be and remain as heretofore hath been used," that Council with some kind of jurisdiction extended over the adjoining shires: and it leaves it unexplained why those Shires and that Jurisdiction are not mentioned at all in the later Statute. What appears to me most striking, both here and in the argument on the Writ *Rege Inconsulto*, is the ease with which Bacon throws off the tone of the Minister of State and the courtier when he comes to argue before Common Law Judges. It was not a common accomplishment in those days.

The opinion of the Judges was delivered in writing

and actions brought or threatened. On the other hand, Lord Eure represents all this turmoil as the factitious result of the exertions of a small body of discontented men, and invited investigation by an impartial commissioner, and he gave figures to shew the popularity of the Council as a Small Debts Court.[1]

Parliament met again in 1614. Sir H. Croft, who was one of those denounced as "undertakers," had endeavoured, before the Session commenced, to gain the ear of Somerset, the new favourite, and win over the King, if not to give up the jurisdiction, at least to keep his promise and let the question come fairly before the Courts at Westminster. In letters already referred to, he went over the whole ground. He professed himself a friend to any general measure for establishing Civil Courts in remote counties, but resented the imputation that the gentry of the four Shires specially needed such a check on their oppressive disposition;[2] and he pointed out that the existing state of things, in which as plaintiffs they could choose their own tribunal, was not effectual for the purpose. He made sundry charges (of venality among others) against the Council, and finally proposed to "answer any objections in His Majesty's presence, that himself may be the judge," which he did "not impugning the extraordinary abilities of those (if he mistook not) that were the chief oppugners:" of whom I presume Bacon was one. The King in a marginal note accepted this challenge, with as large an audience as Sir Herbert might wish,

[1] The causes tried in the four shires increased from 1350 in 1608–9 to 3376 in the following year; and he remarks that the plaintiffs had the option of going to Westminster if they pleased.

[2] Some measure of the sort was brought under the consideration of Parliament when it met. House of Commons Journal, May 18th.

and no doubt would have much enjoyed the passage of wits. However, I find no trace of its having taken place. On the opening of Parliament it appeared that among the conciliatory measures intended to be proposed by the King, a release of the four Shires was not included;[1] and Sir H. Croft soon found himself personally slighted by the King for persevering in the cause, while he was looked on coldly by his friends in Parliament as a time-server.[2] He then changed his plan, and with the concurrence of his constituents endeavoured to procure as a grace that which they had hitherto demanded as a right. In point of form, the mere issue of new instructions omitting the English shires would have left the Crown at liberty to re-include them at another time; and so, unless the conjecture be accepted that some of the criminal or censorial powers had been renewed since 1607, nothing might seem to be gained by such a concession but the relinquishment of the ten pounds civil jurisdiction and the removal of the bodily presence of the Council, which seems to have involved some charges in the nature of purveyance on the counties or municipalities. But it was no doubt felt that, the Council once totally withdrawn, they were practically safe from seeing it regain a footing; and on the other hand not only Somerset, whom Sir Herbert seems to have considered friendly to him all along, but Bacon himself, then Attorney General,

[1] A Bill was proposed and passed for the repeal of a clause in 34 Henry VIII., which, if it did not expire with Henry's life, made Wales subject to Crown legislation. I do not know what part the Welch gentry had taken hitherto in the agitation, but there are passages in some of the memoirs shewing that it was, at any rate, sought to alarm them about this clause, which the advocates of the Council treated as obsolete.

[2] See letter to Somerset of May 9th, 1614. S. P. O.

and Lord Sheffield, President of the Northern Council, were favourable to such an arrangement, as yielding no principle and as "rather a mean to take away much occasion of questioning" the jurisdiction of that other Council.[1] The request was not complied with, and the matter was kept before Parliament up to the last day of the short session, with the incident about the King's lost letter already mentioned.

On December 19th of the same year Sir H. Croft made his last appeal, so far as appears, to the King through Somerset, still vouching Bacon and Lord Sheffield, and adding the Lord Treasurer's name, as also favourable. After so many failures one need not seek for any special cause why this effort also came to nothing. But some marginal annotations lead to the inference that Somerset's loss of favour made any step he may have taken ineffectual.[2]

We here lose all trace, so far as I know, of this agitation. Sir Herbert himself died in 1622 abroad, having previously — but how long before is not stated — entered a religious house.[3] In this letter he speaks of his principal fellow-labourers in the cause, Sir Edward Wintorn, Sir Samuel Sandys, and Sir Roger Owen, as disabled like himself from then attending to it. And there is no difficulty in understanding how such an agitation might flag or be altogether abandoned after ten years of failure, — more especially as

[1] Letter of May 9th, already cited. He there speaks of a paper he had already sent for the King's perusal, which I think may be the memorial of the inhabitants of Herefordshire inserted in the Calendar as of June, vol. lxxvi. 55, 56.

[2] One John Mills fills a blank space in this letter with sundry texts, of which I only noted one: "Is it because there is no God in Israel that thou suest to Baalzebub?"

[3] Burke's Peerage and Baronetage.

of sixty names attached to a letter to Somerset thanking him for his favour to the cause, which seems to have shortly preceded the last of Sir Herbert's, all but one of those which I have found to be historical seem to belong to the Royalist party in the ensuing struggle.[1]

In 1617, when Bacon was Chancellor, Lord Compton succeeded Lord Eure, and the new Instructions made no distinction between Wales and the English counties. In both, civil jurisdiction limited to 50*l.* concurrent with the Common Law Courts was given in purely personal actions, which was extended to claims of any amount when the poverty or inability of the plaintiff was duly certified, together with a full equitable and Star Chamber jurisdiction, saving that Injunctions were not to issue against proceedings in the Superior Courts. All the great officers of the State and many Peers, the Bishops of the included dioceses, and several Puisne Judges, were nominally members of the Council, which I believe was an innovation; but the only legal member of the *Quorum* was, as of old, the Chief Justice of Chester, the others being plain knights or gentlemen. Some details as to process and the charge upon the counties for cartage and fuel seem to have been amended; but otherwise the old prece-

[1] I speak only from a cursory examination of Burke and of the list of the members of the Long Parliament; and I do not answer for the identity of the individuals in all cases. One name is Chute, which is that of a member who was committed for his conduct in the Parliament of 1614. Those which seem to be royalist names are Croft, Packington, Hopton, Sheldon, Sandys, Lee, Corbet. The others — the sixty being made up by several of one name signing — are, Bodenham, Coningsby, Scudamore, Baskerville, Vaughan, Hyett, Blount, Tomkins, Kyrle, Barkeley, Edgwick, Pytt, Ketelbye, Dingley, Savage, Brace, Ingram, Moore, Atwood, Jeffreys, Kinaston, Owen, Hayward, Leighton, Briggs, Milton, Ottley, Newton, Chambers, Edwards, Kery, and Norton.

dents were generally followed, and the salaries remained charged on the fines: all the clauses concerning the peace and the administration of justice (nearly the whole document) were to be enrolled in Chancery and to be periodically read in open court.[1]

Some names among the councillors not of the *Quorum* are the same as are subscribed to the letter to Somerset, which may be thought to be evidence of at least an intention to conciliate, and there is nothing to shew it was not successful. In the next reign, as every one knows, the great attack was made on the kindred Council of the North; but the legislation which ensued, after abolishing the Star Chamber itself, took away all similar jurisdiction from the Welch Council and all other courts, leaving untouched, if I rightly read it, any question about the civil jurisdiction. Finally, the statute 1 W. & M. c. 27. altogether repealed 34 H. 8. c. 26. and abolished the Council.

[1] Rymer, Fœd. Nov. 12th, 1617.

THE

JURISDICTION OF THE MARCHES.

The effect of the first argument of the King's Solicitor-General, in maintaining the jurisdiction of the Council of the Marches over the four shires.

THE question for the present is only upon the statute of 34 H. VIII. and though it be a great question, yet it is contracted into small room; for it is but a true construction of a monosyllable, the word *marches*.

The exposition of all words resteth upon three proofs; the propriety of the word, and matter precedent and subsequent.

Matter precedent concerning the intent of those that speak the words, and matter subsequent touching the conceit and understanding of those that construe and receive them.

First, therefore, as to *vis termini*, the force and propriety of the word; this word *marches* signifieth no more but limits, or confines, or borders, in Latin *limites*, or *confinia*, or *contermina;* and thereof was derived at the first *Marchio*, a Marquess, which was *comes limitaneus*.

Now these limits cannot be *linea imaginaria*, but it must have some contents and dimension, and that can

be no other but the counties adjacent; and for this construction we need not wander out of our own state, for we see the counties of Northumberland, Cumberland, and Westmoreland lately the borders upon Scotland: now the middle shires were commonly called the east, west, and middle marches.

To proceed therefore to the intention of those that made the statute, in the use of this word, I shall prove that the parliament took it in this sense by three several arguments.

The first is, that otherwise the word should be idle; and it is a rule, *verba sunt accipienda, ut sortientur effectum.* For this word *marches*, as is confessed on the other side, must be either for the counties marches, which is our sense, or the lordships marchers, which is theirs; that is, such lordships as by reason of the incursions and infestation of the Welsh in ancient time, were not under the constant possession of either dominion, but like the batable ground where the war played. Now if this latter sense be destroyed, then all equivocation ceaseth.

That it is destroyed appears manifestly by the statute of 27 H. VIII. made seven years before the statute of which we dispute. For by that statute all the lordships marchers are made shire ground, being either annexed to the ancient counties of Wales, or to the ancient counties of England, or erected into new counties, and made parcel of the dominion of Wales; and so no more marches after the statute of 27°. So as there were no marches in that sense at the time of the making of the statute of 34.

The second argument is from the comparing of the place of the statute, whereupon our doubt riseth, *viz.*

that there shall be and remain a Lord President and council in the dominion of Wales and the marches of the same, &c. with another place of the same statute, where the word *marches* is left out. For the rule is, *opposita juxta se posita magis elucescunt.* There is a clause in the statute which gives power and authority to the King to make and alter laws for the weal of his subjects of his dominion of Wales: there the word *marches* is omitted, because it was not thought reasonable to invest the King with a power to alter the laws, which is the subjects' birthright, in any part of the realm of England; and therefore, by the omission of the word *marches* in that place, you may manifestly collect the signification of the word in the other, that is, to be meant of the four counties of England.

The third argument which we will use is this: the Council of the marches was not erected by the Act of Parliament, but confirmed; for there was a president and council long before in E. IV.'s time, by matter yet appearing, and it is evident upon the statute itself, that in the very clause which we now handle it referreth twice to the usage, *as heretofore hath been used.*

This then I infer, that whatsoever was the King's intention in the first erection of this court was likewise the intention of the Parliament in the establishing thereof, because the Parliament builded but upon an old foundation.

The King's intention appeareth to have had three branches, whereof every of them doth manifestly comprehend the four shires.

The first was the better to bridle the subject of Wales, which at that time was not reclaimed; and

therefore it was necessary for the president and council there to have jurisdiction and command over the English shires, because that by the aid of them which were undoubted good subjects, they might the better govern and suppress those that were doubtful subjects.

And if it be said, that it is true that the four shires were comprehended in the commission of *oyer* and *terminer*, for the suppressing of riots and misdemeanors, but not for the jurisdiction of a court of equity; to that I answer, that their [1] commission of oyer and terminer was but *gladius in vagina*, for it was not put in practice amongst them; for even in punishment of riots and misdemeanors they proceed not by their commission of oyer and terminer by way of jury, but as a council by way of examination. And again it was necessary to strengthen that court for their better countenance with both jurisdictions, as well civil as [2] criminal, for *gladius gladium juvat*.

The second branch of the King's intention was to make a better equality of commerce and intercourse in contracts and dealings between the subjects of Wales and the subjects of England: and this of necessity must comprehend the four shires; for otherwise, if the subject of England had been wronged by the Welsh on the side of Wales, he might take his remedy nearer hand; but if the subject of Wales, for whose weal and benefit the statute was chiefly made, had been wronged by the English in any of the shires, he mought [3] have sought his remedy at Westminster.

[1] "There" in MS.

[2] Originally "as civil and criminal," in MS. Bacon inserted "well," but left the "and" uncorrected.

[3] So in MS. both here and above. I have retained the spelling in this place, because it is evidently the old past tense of "must," now lost to us.

The third branch of the King's intent was to make a convenient dignity and state of the mansion and resiance of his eldest son, when he should be created Prince of Wales: which likewise must plainly include the four shires; for otherwise to have sent *primogenitum Regis* to a government, which without the mixture of the four shires (as things then were) had more peril than honour or command, or to have granted him only a power of lieutenancy in those shires where he was to keep his state, not adorned with some authority civil, had not been convenient.

So that here I conclude the second part of that I am to say touching the intention of the parliament precedent.

Now touching the construction subsequent, the rule is good, *optimus legum interpres consuetudo;* for our labour is not to maintain an usage against a statute, but by an usage to expound a statute; for no man will say but the word *marches* will bear the sense that we give it.

This usage or custom is fortified by four notable circumstances: first, that it is ancient, and not late, or recent; secondly, it is authorised, and not popular, or vulgar; thirdly, that it hath been admitted and quiet, and not litigious, or interrupted; and fourthly, when it was brought in question, which was but once, it hath been affirmed *judicio controverso.*

For the first, there is record of a president and council that hath exercised and practised jurisdiction in these shires, as well sixty years before the statute, *viz.* since 18 E. IV. as the like number of years since; so that it is *Janus bifrons*, it hath a face backward from the statute as well as forwards.

For the second, it hath received these allowances: by the practice of that court by suits originally commenced there; by remanding from the courts of Westminster when causes within those shires have been commenced here above, sometimes in Chancery, sometimes in the Star-Chamber; by the admittance of divers great learned men and great judges, that have been of that council and exercised that jurisdiction, as at one time Bromley, Morgan, and Brook, being the two chief justices and chief baron, and divers others; by the King's learned counsel, which always were called to the penning of the King's Instructions; and lastly by the King's Instructions themselves, which though they be not always extant, yet it is manifest that since 17 H. VIII. when Princess Mary went down, the four shires were ever comprehended in the Instructions, either by name, or by that that amounts to so much. So as it appears that this usage or practice hath not been an obscure custom practised by the multitude, which is many times erroneous, but authorised by the judgment and consent of the state: for as it is *vera vox* to say, *maximus erroris populus magister*, so it is *dura vox* to say, *maximus erroris Princeps magister*.

For the third, it was never brought in question till 16 Eliz. in the case of one Winde.

And for the fourth, the controversy being moved in that case, it was referred to Gerrard, Attorney, and Bromley, Solicitor, who was afterwards chancellor of England, and had his whole state of living in Shropshire and Worcester, and by them reported to the lords of the council in the Star Chamber, and upon their report decreed, and the jurisdiction affirmed.

Lastly, I will conclude with two manifest badges and tokens, though but external yet violent in demonstration, that these four shires were understood by the word *marches;* the one the denomination of that council, which was ever in common appellation termed and styled *the council of the marches*, or in the marches, rather than the council of Wales, or in Wales; and *denominatio est a digniore.* If it had been intended of lordships marches, it had been as if one should have called my lord mayor, my lord mayor of the suburbs. But it was plainly intended of the four English shires, which indeed were the more worthy.

And the other is of the perpetual resiance and mansion of the council, which was evermore in the shires: and to imagine that a court should not have jurisdiction where it sits, is a thing utterly improbable, for they should be *tanquam piscis in arido.*

So as upon the whole matter I conclude that the word *marches* in that place, by the natural sense and true intent of the statute, is meant of the four shires.

The effect of that, that was spoken by Sergeant Hutton *and Serjeant* Harris, *in answer of the former argument, and for the excluding of the jurisdiction of the marches in the four shires.*

That which they both did deliver was reduced to three heads.

The first, to prove the use of the word *marches* for lordships marchers.

The second to prove the continuance of that use of the word after the statute of 27°, that made the lordships marchers shire grounds; whereupon it was in-

ferred, that though the marches were destroyed in nature, yet they remained in name.

The third was some collections they made upon the statute of 34, whereby they inferred that that statute intended that word in that signification.

For the first, they did allege divers statutes before 27 H. VIII. and divers book cases of law in print, and divers offices and records, wherein the word *marches* of Wales was understood of the lordships marchers.

They said farther and concluded that, whereas we show our sense of the word but rare, they show theirs common and frequent; and whereas we show it but in a vulgar use and acceptation, they show theirs in a legal use in statutes, authorities of books, and ancient records.

They said farther, that the example we brought of marches upon Scotland was not like but rather contrary; for they were never called marches of Scotland, but the marches of England: whereas the statute of 34 doth not speak of the marches of England, but of the marches of Wales.

They said farther, that the county of Worcester did in no place or point touch upon Wales, and therefore that county could not be termed *marches*.

To the second they produced three proofs; first some words in the statute of 32 H. VIII. where the statute, providing for a form of trial for treason committed in Wales and the marches thereof, doth use that word; which was in time after the statute of 27, whereby they prove the use of the word continued.

The second proof was out of two places of the statute whereupon we dispute, where the word *marches* is used for the lordships marchers.

The third proof was the style and form of the commission of *oyer* and *terminer* even to this day, which run to give power and authority to the president and council there, *infra principalitat. Walliæ*, and *infra* the four counties by name, with this clause farther *et marchias Walliæ eisdem comitatibus adjacent'*: whereby they infer two things strongly, the one that the marches of Wales must needs be a distinct thing from the four counties; the other that the word *marches* was used for the lordships marchers long after both statutes.

They said farther, that otherwise the proceeding which had been in the four new erected counties of Wales by the commission of *oyer* and *terminer*, by force whereof many had been proceeded with both for life and other ways, should be called in question, as *coram non judice*, insomuch as they neither were part of the Principality of Wales, nor part of the four shires, and therefore must be contained by the word *marches*, or not at all.

For the third head, they did insist upon the statute of 34, and upon the preamble of the same statute, the title being *an act for certain ordinances in the King's majesty's dominion and principality of Wales*, and the preamble being *for the tender zeal and affection that the King bears to his subjects of Wales;* and again, *at the humble suit and petition of his subjects of Wales.* Whereby they infer that the statute had no purpose to extend, or intermeddle with any part of the King's dominions or subjects, but only within Wales.

And for usage and practice, they said it was nothing against an act of parliament.

And for the instructions, they pressed to see the instructions immediately after the statute made.

And for the certificate and opinions of Gerrard and Bromley, they said they doubted not, but that if it were now referred to the Attorney and Solicitor, they would certify as they did.

And lastly, they relied, as upon their principal strength, upon the precedent of that which was done of the exempting of Cheshire from the late jurisdiction of the said council; for they said, that from 34 of H. VIII. until 11 of Queen Eliz. the Court of the Marches did usurp jurisdiction upon that county, being likewise adjacent to Wales as the other four are; but that in the eleventh year of Queen Elizabeth aforesaid, the same, being questioned at the suit of one Radforde, was referred to the Lord Dyer and three other judges, who by their certificate at large remaining of record in the chancery did pronounce the said shire to be exempted, and that in the conclusion of their certificate they gave this reason; because it was no part of the principality or marches of Wales. By which reason, they say, it should appear their opinion was, that the word *marches* could not extend to counties adjacent. This was the substance of their defence.

The reply of the King's solicitor to the arguments of the two serjeants.

Having divided the substance of their arguments *ut supra*, he did pursue the same division in his reply, observing nevertheless both a great redundancy and a great defect in that which was spoken. For touching the use of the word *marches* great labour had been taken, which was not denied: but touching the intent of the parliament, and the reasons to demonstrate the

same, which were the life of the question, little or nothing had been spoken.

And therefore, as to the first head, that the word *marches* had been often applied to the lordships marchers, he said it was the sophism which is called *sciomachia*, fighting with their shadows; and that the sound of so many statutes, so many printed book cases, so many records, were *nomina magna*, but they did not press the question. For we grant that the word *marches* hath significations sometimes for the counties, sometimes for the lordships marchers, like as Northampton and Warwick are sometimes taken for the towns of Northampton and Warwick, and sometimes for the counties of Northampton and Warwick. And Dale and Sale are sometimes taken for the vills or hamlets of Dale and Sale, and sometimes taken for the parishes of Dale and Sale: and therefore that the most part of that they had said went not to the point.

To that answer which was given to the example of the middle shires upon Scotland, it was said, it was not *ad idem;* for we used it to prove that the word *marches* may and doth refer to whole counties, and so much it doth manifestly prove, neither can they deny it. But then they pinch upon the addition; because the English counties adjacent upon Scotland are called the marches of England, and the English counties adjacent upon Wales are called the marches of Wales. Which is but a difference in phrase: for sometimes limits and borders have their names of the inward country, and sometimes of the outward country. For the distinction of *exclusivè* and *inclusivè* is a distinction both in time and place; as we see that that, which we call this day fortnight, excluding the day, the French and the

law-phrase calls this day fifteen days, or *quindena*, including the day. And if they had been called the marches upon Wales or the marches against Wales, then it had been clear and plain; and what difference between the banks of the sea and the banks against the sea? So that he took this to be but a toy or cavillation, for that phrases of speech are *ad placitum, et recipiunt casum.*

As to the reason of the map, that the county of Worcester doth no way touch upon Wales; it is true, and I do find when the lordships marchers were annexed, some were laid to every other of the three shires, but none to Worcester. And no doubt but this emboldened Winde to make the claim to Worcester, which he durst not have thought on for any of the other three. But it falls out well that that which is the weakest in probability is strongest in proof; for there is a case ruled in that more than in the rest. But the true reason is, that usage must overrule propriety of speech; and therefore if all commissions, and instructions, and practices, have coupled these four shires, it is not the map that will sever them.

To the second head he gave this answer. First, he observed in general that they had not showed one statute, or one book case, or one record (the commissions of oyer and terminer only excepted) wherein the word *marches* was used for lordships marchers since the statute of 34. So that it is evident, that as they granted the nature of those marches was destroyed and extinct by 27; so the name was discontinued soon after, and did but remain a very small while, like the sound of a bell, after it hath been rung; and as indeed it is usual when names are altered, that the old name which is *expired* will continue for a small time.

Secondly, he said that whereas they had made the comparison, that our acceptation of the word was popular, and theirs was legal, because it was extant in book cases, and statutes, and records; they must needs confess that they are beaten from that hold: for the name ceased to be legal clearly by the law of 27, which made the alteration in the thing itself, whereof the name is but a shadow; and if the name did remain afterwards, then it was neither legal nor so much as vulgar, but it was only by abuse, and by a *trope* or *catachresis*.

Thirdly, he showed the impossibility how that signification should continue, and be intended by the statute of 34. For if it did, it must be in one of these two senses, either that it was meant of the lordships marchers made part of Wales or of the lordships marchers annexed to the four shires of England.

For the first of these, it is plainly impugned by the statute itself: for the first clause of the statute doth set forth that the principality and dominion of Wales shall consist of twelve shires; wherein the four new erected counties which were formerly lordships marchers, and whatsoever else was lordships marchers annexed to the ancient counties of Wales, is comprehended; so that of necessity all that territory or border must be Wales: then followeth the clause immediately, whereupon we now differ, *viz.* that there shall be and remain a president and council in the principality of Wales and the marches of the same. So that the parliament could not forget so soon what they had said in the clause next before: and therefore by the marches they meant somewhat else besides that which was Wales. Then if they fly to the second signification, and say that it

was meant by[1] the lordships marchers annexed to the four English shires; that device is merely *nuper nata oratio*, a mere fiction and invention of wit, crossed by the whole stream and current of practice; for if that were so, the jurisdiction of the council should be over part of those shires, and in part not; and then in the suits commenced against any of the inhabitants of the four shires, it ought to have been laid or showed that they dwelt within the ancient lordships marchers, whereof there is no shadow that can be showed.

Then he proceeded to the three particulars. And for the statute of 32, for trial of treason, he said it was necessary that the word *marches* should be added to Wales, for which he gave this reason: that the statute did not only extend to the trial of treasons which should be committed after the statute, but did also look back to treasons committed before: and therefore this statute, being made five years after the statute of 27 that extinguished the lordships marchers, and looking back as was said, was fit to be penned with words that might include the preterperfect tense as well as the present tense; for if it had rested only upon the word *Wales*, then a treason committed before the lordships marchers were made part of Wales might have escaped the law.

To this also another answer was given; which was that [as][2] the word *marches* was used in that statute, it could not be referred to the four shires, because of the words following, wherewith it is coupled, *viz.* in

[1] So in MS. quære of ?

[2] I have inserted this word, which is not in the MS., to make a grammatical sentence. But I do not myself see the bearing of the argument.

Wales, and the marches of the same, where the King's writ runs not.

To the two places of the statute of 34 itself, wherein the word *marches* is used for lordships marchers, if they be diligently marked, it is merely sophistry to allege them. For both of them do speak by way of recital of the time past before the statute of 27, as the words themselves being read over will show without any other enforcement. So that this is still to use the almanack of the old year with the new.

To the commissions of oyer and terminer, which seemeth to be the best evidence they show for the continuance of the name in that *tropical* or abused sense, it might move somewhat, if that form of penning those commissions had been begun since the statute of 27. But we show forth the commission in 17 H. VIII. when the Princess Mary went down, running in the same manner *verbatim;* and in that time it was proper, and could not otherwise be. So that it appeareth that it was but merely a *fac simile*, and that notwithstanding the case was altered yet the clerk of the crown pursued the former precedent; hurt it did none, for the word *marches* is there superfluous.

And whereas it was said that the words in those commissions were effectual, because else the proceedings in the four new erected shires of Wales should be *coram non judice*, that objection carrieth no colour at all; for it is plain, they have authority by the word *Principality* of Wales, without adding the word *marches;* and that is proved by a number of places in the statute of 34 where if the word *Wales* should not comprehend those shires, they should be excluded in effect of the whole benefit of that statute; for the word *marches* is never added in any of these places.

reason to conceive that the parliament did not intend to include Cheshire.

And whereas they pinch upon the last words in the certificate, *viz.* that Cheshire was no part of the dominion nor of the marches, they must supply it with this sense, — not within the meaning of the statute: for otherwise the judges could not have discerned of it, for they were not to try the fact, but to expound the statute; and that they did upon those reasons which were special to Cheshire, and have no affinity with the four shires.

And, therefore if it be well weighed, that certificate makes against them; for as *exceptio firmat legem in casibus non exceptis*, so the excepting of that shire by itself doth fortify, that the rest of the shires were included in the very point of difference.

After this he showed a statute in 18 Eliz. by which provision is made for the repair of a bridge called Chepstow bridge, between Monmouth and Gloucester, and the charge lay in part upon Gloucestershire; in which statute there is a clause, that if the justices of peace do not their duty in levying of the money they shall forfeit five pounds, to be recovered by information before the council of the marches; whereby he inferred that the parliament would never have assigned the suit to that court, but that it conceived Gloucestershire to be within the jurisdiction thereof. And therefore he concluded that here is in the nature of a judgment by parliament, that the shires are within the jurisdiction.

The third and last argument of the King's solicitor in the case of the marches, in reply to Serjeant Harris.

This case groweth now to some ripeness, and I am

glad we have put the other side into the right way. For in former arguments they laboured little upon the intent of the statute of 34 H. VIII. and busied themselves in effect altogether about the force and use of the word *marches;* but now finding that *litera mortua non prodest*, they offer at the true state of the question, which is the intent. I am determined therefore to reply to them in their own order, *ut manifestum sit* (as he saith) *me nihil aut subterfugere voluisse reticendo, aut obscurare dicendo.*

All which hath been spoken on their part consisteth upon three proofs.

The first was by certain inferences to prove the intent of the statute.

The second was to prove the use of the word *marches* in their sense long after both statutes, both that of 27, which extincted the lordships marchers, and that of 34, whereupon our question ariseth.

The third was to prove an interruption of that practice and use of jurisdiction upon which we mainly insist, as the best exposition of the statute.

For the first of these concerning the intention, they brought five reasons.

The first was that this statute of 34 was grounded upon a platform, or preparative, of certain ordinances made by the King two years before, *viz.* 32. In which ordinances there is the very clause whereupon we dispute, *viz.* That there should be and remain in the dominion and principality of Wales a president and a council. In which clause nevertheless the word *marches* is left out, whereby they collect that it came into the statute of 34 but as a slip, without any farther reach or meaning.

The second was, that the mischief before the statute, which the statute meant to remedy, was that Wales was not governed according to similitude or conformity with the laws of England. And therefore, that it was a cross and perverse construction, when the statute laboured to draw Wales to the laws of England, to construe it that it should abridge the ancient subjects of England of their own laws.

The third was that in case of so great importance it is not like that if the statute had meant to include the four shires it would have carried it in a dark general word, as it were *noctanter*, but would have named the shires to be comprehended.

The fourth was, the more to fortify the third reason, they observed that the four shires are remembered and named in several places of the statute, three in number; and therefore it is not like that they would have been forgotten in the principal place, if they had been meant.

The fifth and last was, that there is no clause of attendance, that the sheriffs of the four shires should attend the lord president and the council; wherein there was urged the example of the acts of parliament, which erected courts; as the court of Augmentations, the court of Wards, the court of Survey, in all which there are clauses of attendance; whereupon they inferred that evermore where a statute gives a court jurisdiction, it strengtheneth it with a clause of attendance; and therefore no such clause being in this statute, it is like there was no jurisdiction meant. Nay farther they noted, that in this very statute for the justices of Wales there is a clause of attendance from the sheriffs of Wales.

In answer to their first reason, they do very well in

my opinion to consider Mr. Attorney's business and mine, and therefore to find out for us evidence and proofs which we have no time to search; for certainly nothing can make more for us than these ordinances which they produce. For the diversity of penning of that clause in the ordinances, where the word *marches* is omitted, and that clause in the statute where the word *marches* is added, is a clear and perfect direction what was meant by that word. The ordinances were made by force and in pursuance of authority given to the King by the statute of 27. To what did that statute extend? Only to Wales. And therefore the word *marches* in the ordinances is left out. But the statute of 34 respected not only Wales, but the commixed government, and therefore the word *marches* was put in. They might have remembered that we built an argument upon the difference of penning of that statute of 34 itself in the several clauses of the same; for that in all other clauses, which concern only Wales, the word *marches* is ever omitted, and in that clause alone that concerneth the jurisdiction of the president and council it is inserted. And this our argument is notably fortified by that they now show of the ordinances, where in the very selfsame clause touching the president and council, because the King had no authority to meddle but with Wales, the word *marches* is omitted. So that it is most plain, that this word comes not in by chance or slip, but with judgment and purpose as an effectual word; for, as it was formerly said, *opposita juxta se posita magis elucescunt.* And therefore I may likewise urge another place in the statute which is left out in the ordinance. For I find there is a clause that the town of Bewdley, which is

confessed to be no lordship marcher, but to lie within the county of Worcester, yet, because it was an exempted jurisdiction, is by the statute annexed unto the body of the said county. First this shows that the statute of 34 is not confined to Wales and the lordships marchers, but that it intermeddles with Worcestershire. Next, do you find any such clause in the ordinances of 32? No. Why? Because they were appropriate to Wales. So that in my opinion nothing could inforce our exposition better than the collating of the ordinance of 32 with the statute of 34.

In answer to the second reason, the course that I see often taken in this cause makes me think of the phrase of the Psalm, *starting aside like a broken bow:* so when they find their reasons broken, they start aside to things not in question. For now they speak as if we went about to make the four shires Wales, or to take from them the benefit of the laws of England, or their being accounted amongst the ancient counties of England. Doth any man say that those shires are not within the circuits of England, but subject to the justices of Wales; or that they should send but one knight to the parliament, as the shires of Wales do; or that they may not sue at Westminster, in chancery, or at common law, or the like? No man affirms any such things. We take nothing from them, only we give them a court of summary justice in certain causes at their own doors.

And this is *nova doctrina*, to make such an opposition between law and equity, and between formal justice and summary justice. For there is no law under heaven which is not supplied with equity; for *summum jus, summa injuria;* or as some have it, *summa lex,*

summa crux. And therefore all nations have equity; but some have law and equity mixed in the same court, which is the worse; and some have it distinguished in several courts, which is the better. Look into any counties Palatine, which are small models of the great government of kingdoms, and you shall never find any but had a chancery.

Lastly it is strange that all other places do require courts of summary justice, and esteem them to be privileges and graces, and in this case[1] only they are thought to be servitudes and loss of birthright. The universities have a court of summary justice, and yet I never heard that scholars complain their birthright was taken from them. The stannaries have them, and you have lately affirmed the jurisdiction;[2] and yet you have taken away no man's birthright. The court at York, whosoever looks into it, was erected at the petition of the people, and yet the people did not mean to cast away their birthright. The court of wards is mixed with discretion and equity; and yet I never heard that infants and innocents were deprived of their birthrights. London, which is the seat of the kingdom, hath a court of equity, and holdeth it for a grace and favour; how then cometh this case to be singular? And therefore these be new phrases and conceits, proceeding of error or worse; and it makes me think that a few do make their own desires the desires of the country, and that this court is desired by the greater number, though not by the greater stomachs.

In answer to the third reason, if men be conversant

[1] "Cause" in MS.
[2] Mich. T. 4 Jac. 4 Inst. 231.

in the statutes of this kingdom, it will appear to be no new thing to carry great matters in general words without other particular expressing. Consider but of the statute of 26 H. VIII. which hath carried estates tails under the general words of estates of inheritance. Consider of the statute of 16 R. II. of *præmunire*, and see what great matters are thought to be carried under the word *alibi*. And, therefore it is an ignorant assertion to say that the statute would have named the shires, if it had meant them.

Secondly the statute had more reason to pass it over in general words, because it did not ordain a new matter, but referreth to usage; and though the statute speaks generally, yet usage speaks plainly and particularly, which is the strongest kind of utterance or expressing. *Quid verba audiam cum facta videam.*

And thirdly this argument of theirs may be strongly retorted against them. For as they infer, that the shires were not meant because they were not included by name; so we infer, that they are meant because they are not excepted by name, as is usual by way of proviso in like cases. And our inference hath far greater reason than theirs, because at the time of the making of the statute they were known to be under the jurisdiction. And, therefore, that ought to be most plainly expressed which should work a change, and not that which should continue things as they were.

In answer to their fourth reason, it makes likewise plainly against them. For there be three places where the shires be named, the one for the extinguishing of the custom of gavel-kind; the second for the abolish-

to carry inheritance and freehold; the third for the restraining of certain franchises to that state they were in by a former statute. In these three places the words of the statute are, *the lordships marchers annexed unto the counties of Hereford, Salop, &c.*

Now mark, if the statute conceived the word *marches* to signify lordships marchers, what needeth this long circumlocution? It had been easy to have said, within the *marches*. But because it was conceived that the word *marches* would have comprehended the whole counties, and the statute meant but of the lordships marchers annexed; therefore they were enforced to use that *periphrasis* or length of speech.

In answer to the fifth reason I give two several answers; the one, that the clause of attendance is supplied by the word *incidents;* for the clause of establishment of the court hath that word, *with all incidents to the same as heretofore hath been used;* for execution is ever incident to justice or jurisdiction: the other, because it is a court, that standeth not by the act of parliament alone, but by the King's instructions whereto the act refers. Now no man will doubt but the King may supply the clause of attendance; for if the King grant forth a commission of oyer and terminer, he may command what sheriff he will to attend it; and therefore there is a plain diversity between this case and the cases they vouch of the courts of Wards, Survey, and Augmentations: for they were courts erected *de novo* by parliament, and had no manner of reference either to usage or instructions; and therefore it was necessary that the whole frame of those courts, and their authority both for judicature and execution should be described and expressed by

parliament. So was it of the authority of the justices of Wales in the statute of 34, mentioned because there are many ordinances *de novo* concerning them; so that it was a new erection, and not a confirmation of them.

Thus have I, in confutation of their reasons, greatly as I conceive confirmed our own, as it were with new matter: for most of that they have said made for us. But as I am willing to clear your judgments, in taking away the objections; so I must farther pray in aid of your memory for those things which we have said, whereunto they have offered no manner of answer. For unto all our proofs which we made touching the intent of the statute, which they grant to be the spirit and life of this question, they said nothing: as not a word to this, That otherwise the word *marches* in the statute should be idle or superfluous: not a word to this, That the statute doth always omit the word *marches* in things that concern only Wales: not a word to this, That the statute did not mean to innovate, but to ratify, and therefore if the shires were in before, they are in still: not a word to the reason of the commixed government, as, That it was necessary for the reclaiming of Wales to have them conjoined with the shires; That it was necessary for commerce and contracts, and properly for the ease of the subject of Wales against the inhabitants of the shires; That it was not probable that the parliament meant the Prince should have no jurisdiction civil in that place, where he kept his house. To all these things, which we esteem the weightiest, there is *altum silentium*, after the manner of children that skip over where they cannot spell.

Now to pass from the intent to the word. First I

will examine the proofs they have brought that the word was used in their sense after the statutes 27 and 34: then I will consider what is gained, if they should prove so much: and lastly I will briefly state our own proofs touching the use of the word.

For the first it hath been said, that whereas I called the use of the word *marches*, after the statute of 27, but a little chime at most of an old word, which soon after vanished, they will now ring us a peal of statutes to prove it. But if it be a peal, I am sure it is a peal of bells, and not a peal of shot: for it clatters, but it doth not strike: for of all the catalogue of statutes I find scarcely one save those that were answered in my former argument, but we may with as good reason affirm in every of them the word *marches* to be meant of the counties marches, as they can of the lordships marchers. For to begin upwards.

The statute 39 Eliz., for the repair of Wilton Bridge, no doubt doth mean the word *marches* for the counties; for the bridge itself is in Herefordshire, and the statute imposeth the charge of reparation upon Herefordshire by compulsory means, and permitteth benevolence to be taken in Wales, and the marches. Who doubts but this meant of the other three shires, which have far greater use of the bridge than the remote counties of Wales.

For the statute 5 Eliz. concerning perjury, it hath a proviso, that it shall not be prejudicial to the council of the marches for punishing of perjury. Who can doubt but that here marches is meant of the shires, considering the perjuries committed in them have been punished in that court as well as in Wales?

For 2 E. VI. and the clause therein for restrain-

2 & 3 Ed. 6. cap. 13. sec. 16. ing tithes of marriage portions in Wales and the marches, why should it not be meant of counties? For if any such customs had crept and encroached into the body of the shires out of the lordships marchers, no doubt the statute meant to restrain them as well there as in the other places.

And so for the statute of 32 H. VIII. c. 37. which ordains that the benefit of that statute for distress to be had by executors should not extend to any lordship in Wales, or the marches of the same where [mises] [1] are paid, because that imports a general release; what absurdity is there, if there the marches be meant for the whole shires? For if any such custom had spread so far the reason of the statute is alike.

As for the statutes of 37 H. VIII. and 4 E. IV. for the making and appointing of the *custos rotulorum*, there the word *marches* must needs be taken for limits, according to the etymology and derivation; for the words refer not to Wales, but are thus: *within England and Wales, and other the King's dominions, marches, and territories*, that is, *limits and territories*: so as I see no reason but I may truly maintain my former assertion, that after the lordships marchers were extinct by the statute of 27, the name also of *marches* was discontinued, and rarely if ever used in that sense.

But if it should be granted that it was now and then used in that sense, it helps them little; for first it is clear, that the legal use of it is gone, when the thing

[1] So in later editions. There is a blank in the MS. Generally, Bacon's corrections become fewer, and small errors are oftener left untouched, towards the end of the MS.

was extinct; for *nomen est rei nomen;* so it remains but *abusivè*, as if one should call Guletta Carthage, because it was once Carthage; and next, if the word should have both senses, and that we admit an equivocation, yet we so overweigh them upon the intent, as the balance is soon cast.

Yet one thing I will note more; and that is, that there is a certain confusion of tongues on the other side, and that they cannot well tell themselves what they would have to be meant by the word *marches;* for one while they say it is meant for the *lordships marchers generally;* another while they say that it is meant for the inward *marches on Wales' side only;* and now at last they are driven to a poor shift, that there should be left some *little lordship marcher* in the dark,[1] as *casus omissus*, not annexed at all to any county; but if they would have the statute satisfied upon that only, I say no more to them, but *aquila non capit muscas.*

Now I will briefly remember unto you the state of our proofs of the word.

First, according to the laws of speech we prove it by the etymology, or derivation, because *march* is the Saxon word for limit, and *marchio* is *comes limitaneus;* this is the opinion of Camden and others.

Next, we prove the use of the word in the like case to be for counties, by the example of the marches of Scotland: for as it is prettily said in Walker's case by Gaudy, if a case have no cousin, it is a sign it is a bastard, and not legitimate; therefore we have showed you a cousin, or rather a brother, here within our own island of the like use of the word. And whereas a

[1] "Deck" in MS.: corrected in the later editions, I know not whether on any authority.

great matter was made that the now middle shires were never called the marches of Scotland, but the marches of England against Scotland, or upon Scotland, it was first answered that that made no difference; because sometimes the marches take their name of the inward country, and sometimes of the out country; so that it is but *inclusivè* and *exclusivè;* as for example, that which we call in vulgar speech this day *fortnight*, excluding the day, that the law calls *quindena*, including the day; and so likewise, who will make a difference between the banks of the sea, and the banks against the sea, or upon the sea? But now to remove all scruple, we show them Littleton in his chapter of Grand Serjeanty, where he saith, there is a tenure by *Cornage* in the *marches of Scotland;* and we show them likewise the statute of 25 E. III. of labourers, where they are also called the *marches* of *Scotland.*

Then we show some number of bills exhibited to the council there before the statute, where the plaintiffs have the addition of place confessed within the bodies of the shires, and no lordships marchers, and yet are laid to be in the marches.

Then we show divers accounts of auditors in the Duchy from H. IV. downwards where the indorsement is *in marchiis Walliæ*, and the contents are possessions only of Hereford and Gloucestershire (for in Shropshire and Worcestershire the Duchy hath no lands); and whereas they would put it off with a *cuique in sua arte credendum*, — they would believe them, if it were in matter of accounts; — we do not allege them as auditors, but as those that speak English to prove the common use of the word; — *loquendum ut vulgus.*

We show likewise an ancient record of a patent to

Harbert in 15 E. IV. where Kilpeck is laid to be in *com. Hereford in marchiis Walliæ;* and lastly we show again the statute of 25 E. III. where provision is made, that men shall labour in the summer where they dwell in the winter, and there is an exception of the people of the counties of Stafford and Lancaster, &c. and of the marches of Wales and Scotland; where it is most plain, that the marches of Wales are meant for counties, because they are coupled both with Stafford and Lancaster, which are counties, and with the marches of Scotland, which are likewise counties; and as it is informed, the labourers of those four shires do come forth of their shires, and are known by the name of Cokers to this day.

To this we add two things, which are worthy consideration; the one, that there is no reason to put us to the proof of the use of this word *marches* sixty years ago, considering that usage speaks for us; the other, that there ought not to be required of us to show so frequent an use of the word *marches* of ancient time in our sense, as they showed in theirs, because there was not the like occasion: for when a lordship marcher was mentioned it was of necessity to lay it in the marches, because they were out of all counties, but when land is mentioned in any of these counties, it is superfluous to add *in the marches;* so as there was no occasion to use the word *marches*, but either for a more brief and compendious speech to avoid the naming of the four shires, as it is in the statute of 25 E. III. and in the endorsement of accounts, or to give a court cognizance and jurisdiction, as in the bills of complaint; or *ex abundanti*, as in the record of Kilpeck.

There resteth the third main part, whereby they endeavour to weaken and extenuate the proofs which we offer touching practice and possession, wherein they allege five things.

First, that Bristol was in until 7 Eliz. and then exempted.

Secondly, that Cheshire was in until 11 Eliz. and then went out.

Thirdly, they allege certain words in the instructions to Cholmley, vice-president, in 11 Eliz. at which time the shires were first comprehended in the instructions by name and in these words *annexed by our commission:* whereupon they would infer that they were not brought in the statute, but only came in by instructions, and do imagine that when Cheshire went out, they came in.

Fourthly they say, that the intermeddling with those four shires before the statute was but an usurpation and toleration, rather than any lawful and settled jurisdiction; and it was compared to that which is done by the judges in their circuits, who end many causes upon petitions.

Fifthly they allege Sir John Mullen's case, where it is said *consuetudo non præjudicat veritati.*

There was moved also, though it were not by the counsel, but from the judges themselves, as an extenuation, or at least an obscuring of the proof of the usage and practice, in that we show forth no instructions from 17 H. VIII. to 1 Mariæ.

To these six points I will give answer, and, as I conceive, with satisfaction.

For Bristol I say it teacheth them the right way, if they can follow it; for Bristol was not exempt by any

opinion of law, but was left out of the instructions upon supplication made to the Queen.

For Cheshire we have answered it before, that the reason was because it was not probable that the statute meant to make that shire subject to the jurisdiction of that council, considering it was not subject to the high courts at Westminster, in regard it was a county palatine. And whereas they say, that so was Flintshire too, it matcheth not; because Flintshire is named in the statute for one of the twelve shires of Wales.

We showed you likewise effectual differences between Cheshire and these other shires: for that Cheshire hath a Chancery in itself, and over Cheshire the Princes claim jurisdiction as Earl of Chester; to all which you reply nothing.

Therefore I will add this only, that Cheshire went out *secundo flumine*, with the good will of the state; and this is sought to be evicted *adverso flumine*, cross the state; and as they have the[1] opinion of four judges for the excluding of Cheshire, so we have the opinions of two great learned men, Gerrard and Bromley, for the including of Worcester: whose opinions, considering it was but matter of opinion, and came not judicially in question, are not inferior to any two of the other; but we say that there is no opposition or repugnancy between them, but both may stand.

For Cholmley's instructions, the words may well stand *that those shires are annexed by commission;* for the King's commission or instructions (for those words are commonly confounded) must cooperate with the statute, or else they cannot be annexed. But for that conceit that they should come in but in 11, when

[1] I have added the article, which the MS. omits.

Cheshire went out, no man that is in his wits can be of that opinion, if he mark it. For we see that the town of Glocester, &c. is named in the instructions of 1 Mar. and no man, I am sure, will think that Glocester town should be in, and Glocestershire out.

For the conceit, that they had it but *jurisdictionem precariam*, the precedents show plainly the contrary; for they had coercion, and they did fine and imprison, which the judges do not upon petitions; and besides, they must remember that many of our precedents which we did show forth were not of suits originally commenced there, but of suits remanded from hence out of the King's courts, as to their proper jurisdiction.

For Sir John Mullen's case, the rule is plain and sound; that where the law appears, contrary usage cannot control law: which doth not at all infringe the rule of *optima legum interpres consuetudo;* for usage may expound law, though it cannot overrule law.

But of the other side I could show you many cases where statutes have been expounded directly against their express letter to uphold precedents and usage, as 2, 3 Phil. et Mar. upon the statute of Westminster, that ordained that the judges *coram quibus formatum erit appellum* shall inquire of the damages, and yet the law ruled that it shall be inquired before the judges of Nisi Prius. And the great reverence given to precedents appeareth in 39 H. VI. 3 E. IV. and a number of other books. And the difference is exceedingly well taken in Slade's case, Coke's Reports, 4. that is, where the usage runs but amongst clerks, and where it is in the eye and notice of the judge; for there it shall be presumed, saith the book, that if the law were otherwise than the usage hath gone, that either the

4 Co. 94.

counsel or the parties would have excepted to it, or the judges *ex officio* would have discerned of it, and found it; and we have ready for you a calendar of judges more than at this table, that have exercised jurisdiction over the shires in that county.[1]

As for exception touching the want of certain instructions, I could wish we had them; but the want of them in my understanding obscureth the case little. For let me observe unto you, that we have three forms of instructions concerning these shires extant; the first names them not expressly, but by reference it doth, *viz.* that they shall hear and determine, &c. *within any of the places or counties within any of their commissions;* and we have one of the commissions, wherein they are named; so as upon the matter they are named. And of this form are the ancient instructions before the statute, 17 H. VIII. when the Princess Mary went down.

The second form of instructions go farther; for they have the towns and exempted places within the counties named, with *tanquam*, — as well within the city of Glocester, the liberties of the duchy of Lancaster, &c. as within any of the counties of any of their commissions; — which clearly admits the counties to be in before. And of this form are the instructions 1 Mariæ, and so along until 11 Eliz.

And the third form, which hath been continued ever since, hath the shires comprehended by name. Now it is not to be thought, but the instructions which are wanting are according to one of these three forms which are extant. Take even your choice, for any of them will serve to prove that the practice there

[1] So in MS.

was ever authorised by the instructions here. And so upon the whole matter, I pray report to be made to his Majesty, that the president and the council hath jurisdiction, according to his instructions, over the four shires, by the true construction of the statute of 34 H. VIII.

ARGUMENT

IN

CHUDLEIGH'S CASE.

PREFACE.

THIS argument has been recovered by Mr. Spedding, and is here translated from the Law French in which it is preserved, Lansd. MSS. 1121. It seems to be a complete and careful report, but not a revised one, and I have had sometimes to fill up or correct an obscure or mutilated sentence conjecturally.

The case itself is fully reported by Coke, who argued on the same side with Bacon, and by Anderson and Popham, who gave judgment on that same side; and Mr. Hargrave, in his MS. notes on *Popham's Reports* in the British Museum, mentions an unedited report by Owen, also one of the majority of the judges, in the Library of Lincoln's Inn.

I believe Bacon does not exaggerate the importance attached to the case and decision at the time, in his frequent mention of it in the *Reading;* and the discussion which the whole doctrine of uses there met with must unquestionably have helped "to reduce it to a true and sound exposition:" yet it seems equally clear that "the many doubts and perplexed questions which had since arisen, and were not yet resolved" at the time of the *Reading*, have ended by restricting the authority of the decision to a very small part of the ground over which it was conceived to extend, and in

fact overruling the doctrine of the majority, at least, of the judges who decided in favour of the defendants.

For though it be true that some of the judges in that majority did point out that the particular limitations in Chudleigh's settlement were such as might exist at Common Law, and that in such cases they would have been destroyed in the event which happened, yet they mostly went on the doctrine of the *scintilla juris*, which applied equally to springing and shifting uses as to those in the nature of contingent remainders, and would have made them all equally destructible before vesting; and some of them, and some also of those who did not go upon this ground, seem to have been prepared to hold (as Coke inclined) that all limitations unknown to the Common Law should, after the statute, be held void in the creation.

In Bacon's argument, which was in Easter Term, 1594, and was the last delivered, there is no notice whatever of this Common Law character of these limitations: and the inference one would naturally draw from this seems to me confirmed by Coke's report of the argument (after judgment delivered), and by other notices, — *viz.* that the observation came from the judges themselves.

There are passages in this argument which illustrate the *Reading*, though we must, of course, be cautious of confounding the arguments of the advocate with the subsequent conclusions of the expositor.

CHUDLEIGH'S CASE.

THE ARGUMENT OF FRANCIS BACON.

He states the case to be that, Sir Richard Chidley, being seised in fee of a manor whereof the land in question was parcel, infeoffed Sir G. S. and others to the use of himself and the heirs of his body by sundry wives, remainder to the use of the feoffees and their heirs during the life of Christopher Chidley his eldest son, remainder in tail to the first, second, third, and so to the tenth son of the said Chr. Childley, remainder to the other sons of the said Richard then living, *viz.* to Thomas, to Oliver, and Nicholas, the remainder to his own right heirs in fee: and then died in the lifetime of his feoffees: and so, there being an intermediate remainder between the estate of the feoffees for the life of Chr. and the remainder in fee which was in Chr., the feoffees infeoffed the said Chr., so excluded from the limitations. Afterwards Chr. has issue, Streightley Chidley and John Chidley, and the said Chr. infeoffs Sir John Chichester, who infeoffs Philip Chichester, under whom the defendant claims. Streightly died without issue; John Chidley enters and grants a lease to the plaintiff, on whom the defendant reenters; and the plaintiff brings trespass. And so the title is between the assignee of Christo-

pher, who makes title under[1] the feoffees in disaffirmance of the contingent use, and the issue of John Chidley, who claims by the contingent use. And the simple question is but this: If the possession be estranged from the first privity at the time when the contingent use ought to arise, and all possibility gone of reviving it by the return of the feoffees (who have granted away their future right included in the livery), whether the springing use be not utterly extinct. And he held that it was.

The case being of great importance, touching the Queen in her prerogative and the subjects in their assurances, was on the side which I argue notably declared by Mr. Attorney General,[2] who, foreseeing the downfal and destruction of the uses which have so long reigned, made a history of their lives and ripped them up from their cradle, demonstrating that they were engendered in fraud and deceit, and manifesting the notes and discredits which sundry good laws from time to time have inflicted on them. Which course I do not intend to follow. But the matter thereafter is good and pertinent. And in confutation I will not bind myself to Mr. Attorney's order, but pursue my own course, which is the order the matter itself more aptly induces for resolution and decision: suffice it that no material thing is objected but it shall be answered: what is of weight shall be expressly refuted; the others of less importance I will shake off in the course of my argument.

In my order I will first endeavour to remove all

[1] Que connaye del feoffees.

[2] Coke. The professional rivalry with him seems to break out here and below, though they were on the same side.

prejudices, and make it appear evidently that the case on my side is not foiled with any contrary authorities, but stands now to be determined by the judges; and having freed the judges from coming prejudicate by any former judgments, I will set forth the consideration of the Statute which is the oracle of this question. Then having made the Statute clear, or at least favourably ambiguous for my side, I will capitulate the multitude of inconveniences which such springing uses set on foot in the state of the government: for, as no expediency ought to cause judges to decline from the truth of the law where it is express and direct, so *in ambiguis eam sequimur rationem quæ vitio caret.*

The prejudice which I have to remove in this cause is in two kinds: the one controls the cases of authority (which have been put with advantage); the other is a generally received opinion, with a continued practice which is more forcible.

Touching authorities, they first object the case of Mantell in 34 H. VIII., which was that Mantell had covenanted in consideration of money and marriage to stand seised to the use of his wife for the term of her life, and after to the use of the heirs of his body, and it was agreed by the judges, on great advice, that the use was raised by the covenant. On which Mr. Brooke says "that the land was saved to the issue;" by which Mr. Atkinson enforces that the use arises out of the possession which the King had by attainder. To which I answer *legis aliud agentis parva auctoritas.* The reason of this resolution was no other than what every student at this day knows to be clear, *viz.* that such a covenant is not executory by action of covenant, but an use rises of

Br. Feoffm. al uses, 16.

itself. As then nothing comes of it, Mr. Brooke abridges this case in point of difference with 21 H. VII. where the covenant was that the land should descend, which covenant gives but an action. Otherwise it is here. And so the opinion is but an inference. But it also has its particular answer: *viz.* that this use is executed and arises in Mantell himself, and not only in the issue of his body. And the reason is not because he has a freehold in the particular estate (for this is only in right of his wife; and I agree that if a man make a lease for life to a feme covert, the remainder to the right heirs of the husband, this is not executed in the husband, as it would be if the particular estate had been limited to himself,) but the cause of its being executed is that the law understands that in the interim, until there is an heir of the body of Mantell, the use[1] in fee is in Mantell himself; and by reason of this doubling and confusion of uses the law is, that the limitation in tail is in himself; as in the famous cause lately pending between the Earl of Bedford and heirs female; where it was adjudged, after long argument, that if a man make a feoffment in fee to the use of one in tail, the remainder to the use of his right heirs; inasmuch as the law intends an use to him and his heirs until he has right heirs, and the having a double use, — one to him and his heirs executed, the other to his right heirs contingent — should be impertinent; for this reason the use was executed in himself, and by the bargain and sale he granted it away. And if it be so in Mantell's case then is it nothing more than tenant in tail attainted of felony, which does not forfeit the estate tail. And so the case is doubly answered.

34 & 35 Eliz. [Moor, 718.]

[1] *i. e.* the old use.

In 38 Hen. VIII. *Br. Assurances* 1., is the case of a device and invention for preventing the heir from aliening: and the device was that a feoffment should be made to the use of the ancestor for life without impeachment of waste, and after to the use of the heir and his heirs until he consented or concluded to aliene, and after to the use of a stranger and his heirs. To this case I answer, first that it is founded on a palpable error; and in cases as in testimonies, if one is found faulty in one point it deserves no credit in others. And it is clear enough that an estate in fee simple cannot be restrained from alienation, [in use] any more than in possession. But be the case pardoned of this error, and considered further. I ask when the new use is to spring by this condition? Plainly on the consent and conclusion. On the other hand, when would the first uses be disturbed? Not before the alienation which removes the possession from privity. Now, must not a conclusion of alienation precede an actual alienation? Certainly it must: and therefore the springing use has the start, and prevents the disturbance; and if this case be well scanned, I[1] say it makes greatly for me, for in truth it was the opinion of this inventor that if the contingent use had been limited to await the alienation consummate, it had come *nimis tarde;* and to mend this, the rising was appointed on the conclusion: and so I repent that I have discredited the case, as it makes for me.

In 6 Ed. VI. feoffment was made to the use of J. S. and his heirs until J. D. should pay a certain sum, and then to the use of the said J. D. and his heirs: the payment was made, and it

Br. Feoffm. al uses, pl. 30.

[1] The MS. here and at the middle of p. 167, speaks in the third person, as from the Reporter.

was taken for a disputable point whether without actual entry of the feoffees, the use should be executed; and Mr. Brooke gives politic counsel herein, that entry be made both in the name of *cestui que use* and the feoffees, and so to take advantage of each of their rights. This case, duly considered, makes directly for me; for if it was so doubtful whether the contingent use should be executed without an entry of the feoffees when there was no disturbance, it is consequentially admitted as clear that it cannot rise if there be a disturbance: *nam qui dubitat de majore minus* [*concedit*].

Br. Feoffm. al uses, pl. 22. [Case of *cestui que use* with limited estate granting a larger estate.]

And the learning is of the like nature in 4 Hen. VII. and 35 Hen. VIII. Dyer, 57.: where an estate was executed by the *cestui que use* by force of the statute 1 Rich. III., and the question was, whether for vesting the use in the issue in tail, or in him in remainder, there needed any entry of the feoffees. And it was granted that no greater estate passed by such conveyance than could rightfully pass, inasmuch as it is but an authority executed, and that those that hold over are as tenants at sufferance; and yet it was questionable if it should not be necessary to revive the possession of the feoffees, although there was no real or material disturbance. And so these cases support each other and yield this sense of law; that on each contingent or discontinued use, it is dubious whether there is need of the new strength of possession by the feoffees: [opinions are contradictory where there is no disturbance;] [1] but it is clear that it is necessary where there is a disturbance; and so this case fortified with the other swayeth solely to my side.

In 3 Ma. the case was, that one had taken a sum of

[1] "Cont.: nul disturbance."

money beforehand for the marriage of his son and heir, and covenanted that if his son should refuse he would stand seised to the use of the covenantee and his heirs for securing the money till it should be paid: the covenantee died; and after, a refusal was made; and the question is, whether the heir shall be in ward who comes in by colour of a title ancestral descended. But to what purpose makes this case? For we are not arguing whether contingent uses are void in their limitation *ab initio* without any impediments *ex post facto;* and because there is no interruption in this case, but all was in privity, it is merely impertinent. [See apparently on same point Dyer, 298b, pl. 30, 303a, pl. 51.; 1 Rep. 133.]

In 6 and 7 Eliz. (the case of the Lady Ann Manners, on assize, judged in 8 Hen. VIII., and after error brought on it and not pursued), the case was that, upon a treaty of marriage, in consideration thereof one covenanted that he should receive the profits of certain lands during his life, and afterwards would stand seised to the use of his son and his wife after the espousals should be solemnised, and afterwards (says Mr. Atkinson) he executed divers assurances by bargains and sales, fines, feoffments, and recoveries, to ruinate the uses limited, and after intermarriage was had, and the son and daughter entered after the death of the father and made a feoffment to the first uses; and it was adjudged lawful. And no marvel; for Mr. Atkinson has mistaken the book and transposed the time, which is material; for the espousals, which was the time of limitation, were solemnised before any assurance made; and so it was a present use and not contingent. Now it is not doubtful but that a present use can be discontinued, and therefore the judg- Dy. 284.

ment must be taken to be that the feoffor, notwithstanding all his assurances, continued the pernancy of the profits; which shows that all was covinous. And so this case rightly understood makes nothing to our purpose.

Dy. 340. In 17 Eliz. a married man made a feoffment to the use of his second wife, and afterwards joined with the feoffees in certain conveyances to new uses, and afterwards took a second wife, and died; and the second wife entitled herself by the first use. It must be granted this is our very case. But see what was the resolution or better opinion. The court was divided. On the contrary part were Monson and Harper; on our part Dyer and Manwood, in number equal, judges famous and skilled: the other two were not advanced as ours were, who have been, the one for profound and sound judgment, the other for subtlety, the most absolute judges that have ever been. Moreover, the other two do not agree between themselves in the reason, which enfeebles their opinion; for they do not agree whether the feoffees have a title or an authority. But our two agree in opinion and reason. Which reason, to be more memorable, Mr. Dyer has put into Latin words: *adhuc remanet quædam scintilla juris et tituli, quasi medium quid inter utrosque status.* Which words are very significant. For the most proper sense is that, if two uses be limited, one to determine and the other to commence, between the cesser of the one and the rising of the other, the feoffees (who are vessels, as Mr. Atkinson terms them) receive the land from the one *cestui que use* and deliver it to the other, and have a right, in the sight of the law, between the two. And so this last case, being of the greatest effect, makes for our part.

But true it is that the case in 30 Hen. VIII. is stronger against us; that if a man covenant that, on being infeoffed of the manor of D., he will stand seised of the manor of S., this use binds the land into whatever hands it comes. Which case, as it is in a book of the smallest authority, so the absurdity and incongruity of the reason alleged destroys the conclusion, credit, and authority of it. For it seems he compares an use to a charge: which are things of as contrary a nature as can be imagined; for the essence of the one consists in privity, the other regards it not. And so the case is of no credit against such a mass of arguments and reasons as shall be shown hereafter. Br. Feoffm. al uses, pl. 50

And I cite as on my part the case in 10 Eliz., Delamer's case, adjudged on great advice: for in the argument thereof are these words, "that the statute of 27 Hen. VIII. conveys no possession to the use, but only to an use *in esse*;" and a contingent use cannot be said to be an use *in esse*, any more than a suspended or discontinued use, which differ inasmuch as the one resembles a person dead, and the other a person not born; the one future, the other past: whereof both have need of the entry of the feoffees, to give its birth to the one, and to revive the other. And all the parts of the case, well considered, make for our part. [Plowd. 352.]

Now, as to reputation and common opinion, it will be said that after the statute of 27 Hen. VIII. made, for sixty years past, infinite of these assurances have been made, and that by the most learned and mighty, who have endeavoured to perpetuate their families; and if it be error, *communis error facit jus*. To which I answer, that always the judges in their judicial knowledge have used to reform the erroneous prac-

tices and tolerations of the times. Mr. Richill, whom Lit. 720. Littleton calls his master, made a perpetuity [of an estate] in possession, of which many at this time no doubt do the like, *et in hoc discipulus fuit suprà magistrum.* And I doubt not but the device of a rent-charge granted by him in remainder to frustrate a common recovery had by tenant in tail was advised by the most skilful lawyers, and admitted for law until [1 Rep. 61.] lately, when Hunt and Chappel's case was adjudged. And it is likely that counsellors of the law have advised men in such cases, that when the cases come to be scanned it is hard to argue how the law will be taken; but in the mean time, if they prove void, yet the law varies as it chances, and it will be a bridle on the heir that he shall not venture to sell, and a scruple to the purchaser that he shall not buy; and so it is but a conveyance adventured: inconvenience there is none. And to the text of the common law, *communis error facit jus*, one doctor says, *in favorabilibus;* another says, *facit jus*, subintellige, *dormire:* but the learned judges can awaken it when it pleases them.

Now, to consider the very natural sense of the statute of 27 Hen. VIII. For I will not have it bruited that it is endeavoured to frame the law to the time. For, as you my lords judges better know, so, with modesty, I may put it in your remembrance, that your authority over the laws and statutes of this realm is not such as the Papists affirm the Church to have over the Scriptures, to make them a shipman's hose or nose of wax; but such as we say the Church has over them, *scil.* to expound them faithfully and apply them properly; and therefore the rule is of effect, *non leges politiis aptandæ, sed politicæ legibus.* And so committing

all reasons of Parliament to silence awhile, as if there were no inconvenience, I will endeavour to show the intent and letter of the statute, the sense of which ought to be taken:

1st, From the consideration of the law before the statute:

2nd, From the preamble of the statute:

3rd, From the body of the statute.

Touching the law before the statute, I will not range far, but on it I will ground two forcible reasons which decide the controversy.

1. It is to be noted that the statute of 27 Hen. VIII. represents and supplies the part of the feoffees, which is well seen by 28 Hen. VIII., where the case is that baron and feme were jointly in of an use before the statute, and *in præcipe* brought after the statute against the baron alone, he pleaded joint tenancy with his wife: the court said he ought to show the statute, as at common law he should have shown by what feoffment [they held.] The statute therefore succeeds in office to the feoffees. Wherefore my first conclusion is this: that which the feoffees could not execute before the statute by conveyance, the statute does not execute by ordinance. Than this ground nothing can be more sensible or reasonable. Then at common law, if the feoffees[1] had an absolute use in fee simple, the feoffees could execute the fee simple in possession: if one had a particular use with divers remainders thereof, if all in remainder agreed, the feoffees could execute the estate accordingly. But on the other part if one had a contingent use, could the feoffees execute this use? No.

[1] I think "*cestuy que use*" would make better sense. As to the whole paragraph see Note D. to the *Reading*, vol. xiv. p. 359.

For not only are they not compellable by subpœna, but moreover if they were willing, they could not do it by any device in law. Wherefore if the feoffees could not execute this before the statute, no more does the statute after: but when the contingent use comes *in esse*, at which time the feoffee can execute it, the statute wakes it.

2. As a second conclusion it is to be noted that, as it is a common and yet a good learning that the statute *de donis conditionalibus* changes not the law as to the creation of estates tail, but only for their preservation, so this statute of 27 Hen. VIII. alters not the law as to raising of uses, but only to draw the possession after them. Wherefore if a contingent use could not rise at common law if the possession of the feoffees was estranged without regress, so no more can it at this day: for the statute leaves all questions of rising of an use merely to the common law, and makes no alteration.

Now come we to the preamble, from which the lawyers of this realm are wont always to take light. And whereas a wise man has said, *nil ineptius lege cum prologo, jubeat non disputet;* this had been true if preambles were annexed as pleading for the provisions of laws; for the law carries authority in itself: but our preambles are annexed for exposition; and this gives aim to the body of the statute; for the preamble sets up the mark, and the body of the law levels at it.

And I confess when I heard Mr. Attorney argue so strongly out of the preamble, I objected within myself that it was but a fallacy, and that it was the equivocation of the word "use;" for the word "use" against which this statute and others inveigh signifies a thing

which stood by itself and divided and severed from the possession, which was the cause of the mischief and fraud: and now since this statute there is no such thing; there remains only a conveyance, but the use severed is merely extinct. And because this objection is colourable, — that this statute and others more ancient intend only uses severed, — we must examine whether all the mischiefs which the statute recites of severed uses may not be verified of contingent uses.

The mischiefs are eight in number.

The first is the passing of the land without the solemnity and evidence of instruments, by mere words, signs, and tokens. A man makes a feoffment, not to the use of his last Will, like the case vouched by the Countess of Shrewsbury, — for that perchance would be nugatory and the ancient use continue, — but he limits certain uses and afterwards says that if by his last Will, (and he says not in writing) he declares new uses, the first uses shall cease, and the seisin shall be to these new uses: now shall these uses rise well by parol or Will nuncupative.

In like manner if he insert a clause, that if he delivers on his deathbed the ring he commonly wears on his finger to any one, that the first uses shall be determined and the seisin shall be to the use of him to whom he delivers it: now on the delivery of the ring lands pass by signs and tokens.

The second mischief in the statute is the disinheriting of heirs, which is a thing of great moment; for the disposition of the land after death is to the heir according to the law, and other dispositions are of humour and respect, and though the law of 32 Hen. VIII. *de voluntatibus* favour voluntary dispositions, yet it leaves

a third part to the heir; but if a feoffment be made, as in the cases before put, the heir shall have nothing.

The third mischief in the preamble is the depriving of the lords of their benefit of ward. A man makes a feoffment to the use of his first son, and after to the second and the third, and dies, they being within age; now shall his first son be in ward, for it is a feoffment within the statute of 32 Hen. VIII.; but if the eldest son come to full age and die without issue, then will the second son not be in ward, for he comes in as purchaser. This child begins to thrive betimes and purchases his father's land; and so by this fiction of law the lord is defrauded of his ward.

The fourth mischief in the preamble is the uncertainty of assurances to purchasers, which is the most general complaint. For although a man take all the most binding assurances, as fine, feoffment, recovery, warranty; yet the sleight of the contingencies slips from them all: and if he think to be sure by procuring all to join who have an interest, yet this helps not; for how can one join who will be born several years after. And if all the land in the realm were in such conveyances all would be as in mortmain,—no change, no intercourse; but we should have the faction which troubles divers states of *novi cives et veteres cives;* for lands should rest in certain families, and others could be but their farmers.

The fifth mischief is the uncertainty of tenants to the *præcipe.* A man makes a feoffment to the use of J. D., and if J. S. pay such a sum then to the use of J. S.; a stranger who has *eigne* right to the land brings *præcipe* against J. D. J. S. pays the money: the tenancy is gone, and if he pursue his recovery all

is void. But had this been a condition at common law, there an entry would have been necessary, of which the plaintiff could have notice; but this use not only takes away the tenancy but steals it without overt act, merely by operation of law.

The sixth mischief is the loss of tenancy by curtesy and dower.

If such a perpetuity be created where the issue successively enjoys the estate for life only by way of use, now clearly there is no tenancy by curtesy or dower. If the limitation gives an estate tail with restraint according to the usual form, yet there will be no jointure if express liberty be not left to make it. And a greater mischief than all these is, that husbands and wives will not only be deceived of their expectations, but if the estate be actually executed it will be devested, which is a greater prejudice: for if the heir aliene, the estates of curtesy and dower are gone, by reason that he who comes in by the contingent use comes paramount to the incumbrances, — not like him in remainder, but like him who comes in by condition. And the clause "that it shall be as if the person living were naturally dead" does not help this: it is against the principles of law that any one who comes in by limitation or condition should come in with a saving of any particular estate.

The seventh mischief is the perjury in trials of such secret conveyances; because it is a good rule *sine fide instrumentorum perit fides testimoniorum:* for these close and unpublished conveyances ever bring forth corrupt and perjured trials. And the extremity of this mischief does not yet appear, because the [existing] conveyances, for the most part, are fresh in memory:

but when passage of time has obliterated their memory, it will be a labyrinth of uncertainties and so continual occasion of false oaths.

The eighth mischief is the damage the Crown sustains in attainders. *Hac conditione vivitur:* all subjects hold their lives as well as their lands and goods on condition that they commit not certain crimes prohibited; and if they infringe the conditions the law resumes one and the other. But now life, which is the greater, remains subject to the law, but the land, which is the less, is delivered; and the traitor shall be executed, yet the statute executes the use for the land; and whereas men were accustomed to fly for treason, now the land flieth. And so it is plain that all the mischiefs which the statute intended arise as strongly, and more so, on contingent uses, as on severed uses.

And besides all this we must look to the nature of this preamble; that is not a bare preamble standing by itself, but is made a limb of the act: and the joint which unites them is the clause "for the extirping and extinguishing of all such practices;" where the word "such" incorporates the preamble in the act itself.

Now come we to the body of the act; wherein I will take this ground, *ex omnibus verbis eliciendus est sensus qui singula interpretatur.*

First it is to be proved by three parts in the act that the intent of Parliament was that such conveyances shall not be put in ure. The first is that the statute says, "for the extirpation of such feoffments, fines, recoveries, &c.," and says not for the extirpation of such uses, but for the rooting out of such conveyances. So the scope of the statute was not only to quench the uses by the induction of the possession, but to root

out the nature of the assurance. The second is the saving; which says saving the right of all strangers before the making of the act, and not after; as is to be noted in Amy Townsend's case. Yet I am not of Mr. Attorney's mind that upon a feoffment to uses at this day all rights of strangers are gone; but I conceive that he said that *in terrorem*, to be more vehement against uses. For the difference is clear, that if an act of Parliament gives me such a piece of land, the right of all men without a saving passes[1] *inclusivè;* but if an act of Parliament gives me the estate of such an one in such lands, there is no need of any saving, for the gift is qualified by the reference: and this statute gives the estate of the feoffees, and therefore this saving is more than needs, and is only added in *abundantem cautelam;* yet it suffices to show the intent of the statute, which presumes that no such conveyance should be made after; and to this purpose I have alledged it. The third is the proviso that *cestui que use* should have this benefit of things in privity, as conditions, vouchers, and actions, *viz.* such as have their estate executed before such a day and not after. And upon this, as upon the last clause, I will not dispute whether *cestui que use* shall have such benefits at this day, and it is possible that the general words which give the estate of the feoffees will carry[2] this; but it suffices that the law reaches no favour to estates executed since; which shows that it was intended that such conveyances should be discontinued. And if any one object, to what purpose serve the words which you may find in divers places

[1] The MS. has "é release."

[2] The word in the MS. looks like "bar."

of the statute, "who are seised or hereafter shall be seised," I hold these words effectual in regard of uses discontinued; which after the entry of the feoffees may be revived, and so the seisins to the use be subsequent to the statute.

And it will be said, intend you then to overthrow all feoffments to uses as well present as contingent? For this reason, that the statute intends to extirp the very conveyance, takes away as well the one as the other. To which I answer, nothing less; for there is no prohibitory clause in the statute for disabling the conveyance itself. But it suffices to show that the statute favours it not, and therefore in words dubious it is necessary to embrace the intention of the statute. And it is moreover to be retained in memory that present uses could at common law be executed by the feoffees, and not contingent uses: present uses participate not in the inconveniencies of the preamble, contingent uses participate in all: present uses have never been called in question, contingent uses have. But now I will show more direct matter of difference between them, and for the better explanation thereof, it is necessary to consider uses at Common Law in four qualities.

1. Use in possession.
2. Use in remainder.
3. Use on condition subsequent, as if a man had granted his use on condition; and
4. Use on a limitation or condition precedent, as the uses upon which the question is.[1]

The two former are allowed to be executed by the statute, and not the two latter. And this is proved by three places in the statute.

[1] See Reading, vol. xiv. p. 344.

The first is in the fundamental clause of the statute which defines the subject, and shows the uses with which the statute will not meddle. The words are, "all and every such persons who have or hereafter shall have any such use, confidence, or trust in fee simple, fee tail, or for life, or years, or otherwise;" all this is of uses in possession. The statute proceeds, "or any confidence or trust in remainder or reversion." But yet the statute has not any such words as any use, confidence, or trust in possibility, or limitation, or otherwise, or in any other such manner. So the statute stays and rests at uses in remainder and reverter and descends no lower. For as, if a statute commence with the lesser, you can never intend the greater, — as, if it commence with dean, you must not intend a bishop; — so, for the same reasons, where it desists and breaks off at the greater you must not understand the lesser. And this makes out the case if there were nothing else.

The second place of the statute are the words which follow immediately after the others, "shall be deemed and adjudged in lawful estate, seisin, and possession." The words are transposed; for possession refers to present uses, seisin and estate to remainder: for one may be seised of a remainder, and so a man may be said to have estate in a remainder. But none of these can be said of a possibility or interest contingent. And of seisin this is clear: of an estate it is more doubtful, yet not much. For a man is always said to be estated of that which he can give; and if I have a condition, and I grant all my estate to the ter-tenant, it does not extinguish my condition.

But it will be said that the word "estate" is a word

ambiguous, and signifies sometimes the quantity or continuance, as fee simple, fee tail, for life or for years; sometimes it signifies the substance of the interest. But it is to be shown infallibly that in this case it cannot be taken for the former but for the latter, by the words which follow, "of and in such like estate as they have or shall have." In this second place it is taken in the former construction, which will be a vain tautology and repetition if the words were so taken in the former place; for if one took away the words adjoining, which cast a shadow between the matter [before and after,] the text amounts to this, that they shall be adjudged in lawful estate of such estate, &c., whereby it evidently appears that the word estate goes first to substance, and after to quantity: so possibility is excluded. This observation requires attention, as all subtilties of words do; but being rightly considered, it is plain enough.

The third place of the statute is before the others: that "where any persons stand or be seised to the use &c." And upon these words it has been ruled, that an use upon a term is not executed by the statute, nor yet an use discontinued. And for the same reason no more is an use contingent: for the seisin is not to such use until the contingency be performed. And for that which has been objected, that the use is in the keeping of the law, and that nothing is in the feoffees; it is true that the use is preserved by the law, but not executed by the statute before the time. And therefore it appears by evident demonstration, that an interest remains in the feoffees: a fee simple absolute is passed to the feoffees in possession, only a fee simple defeasable is executed by the statute, as is

proved: if then the lesser estate be subtracted and deducted out of the greater, it is of necessity that a surplusage remains. For put this case, that a contingent use was limited to the feoffees themselves; as if I enfeoff J. S. to the use of J. D. and his heirs, so long as J. B. has issue of his body, and after to the use of J. S. himself, the feoffee; now if the limitation or condition comes *in esse*, the use limited to J. D. ceases, and J. S. the feoffee does not take by way of use, but by residue of estate given by livery and not taken away by any use. In like manner is it if a new contingent use had been limited; the feoffees would still take first the residue of the estate after the first use determined, and then in the very same instant the new use is executed as at the first livery. And this is the medium between the two estates; and if the first *cestui que use* be disseised and continue disseised, and the limitation is [accomplished],[1] the first use ceases, and the second cannot rise by reason of the removing of the possession out of privity. And so the feoffees come to have right, and can enter or bring their writ of right; but after they have reentered or recovered, the use now takes the possession from them. But in our case the feoffees are disabled by their own feoffment. And as for the word "clearly" in the statute, it is restrained by these words, "quality and form as he hath the use," and is to be understood for so much as the statute executes.

Thus as to the body of the statute, as well by way of proof as by way of explanation, I think enough has been said. But if the statute were not clear on my side, as I have made it apparent that it is, but only

[1] This is the best guess I can make at a word which is obviously corrupt in the MS.

ambiguous, — in which case that construction ought to be taken which is less mischievous, — I think it fit to consider the mischiefs or inconveniences, which are in their sorts:

First, the evacuating and frustrating of divers notable and profitable statutes.

Secondly, the causing of divers effects and consequents in the policy of the state.

Thirdly, the producing of divers intricate indissoluble questions.

For the first, *leges cum sint vincula societatis non debent esse inter se dissociabiles.* But this law of 27 H. VIII. expounded for the upholding of these perpetuities, is as a *lupus legum*, a wolf or canker which devours the other laws.

The statute of 26 H. VIII. ordains that all persons seised of any estate of inheritance, shall forfeit it for treason. But by this device, a man shall have an inheritance and not forfeit it.

The statute of Fines in 4 H. VII. and 32 H. VIII., ordains and intends that fines shall be a bar to the issue. But by this device, inasmuch as the issue comes in by new limitation as purchaser, the fine in this case shall not be a bar.

The statute of 32 H. VIII. of Wills, requires that all testaments concerning lands shall be in writing. But by this device, as the case is put before, with limitations of uses and proviso to alter them by will, a declaration by way of devise shall be good without writing.

The statute of 32 H. VIII. c. 28. concerning leases, provides that the farmers shall enjoy their reasonable leases, such as the statute qualifies, against all those

who have any estate of inheritance. But by this device lands so entailed, if they have not express liberty given by their conveyances, cannot make such leases, nor shall the farmers enjoy them.

The prerogative of the King, not by statute but by common law, permits not that a thing shall be devested out of the Crown, but by ways convenient and decent for the royal Majesty; that is, by petition, or matter of record, or such like means. But by this means contingent uses are executed out of the possession of the King, and snatch the possession without any ceremony or circumstance, as well as in the case of a common person; and so there is prejudice not only to the royal rights of the prerogative, but also to the honour of the possession of the King. And so it appeareth what a breach it makes in the provisions of divers laws.

As for the inconveniences in the common wealth, (*nam leges tam prudentiam debent politiis quam æquitatem privatis*,) Mr. Atkinson has granted this inconvenience with two colours of commendation:

First that it is a wisdom and foresight for every man to imagine of that which may happen to his posterity, and by all ways establish his name. To this I answer that it is a wisdom, but a greater than even Solomon aspired after, who had a large heart as the Scripture saith. For I find that he uses other language where he says that he must leave the fruit of his labour to one of whom he does not know if he shall be a fool or a wise man. And yet does he say that he shall be but an usufructuary or tenant restrained in a perpetuity? No; but the absolute lord of all that he had by his travail. So little did he know of these establishments; but reputed it a condition of mortality wherein it befits

all men to rest, and not to swell in mind to catch at the prerogatives of heaven, which are permanent, and instability here below. Therefore no need *altum sapere, sed sapere ad sobrietatem*, and if one see his son and heir that is *in esse* to be of bad disposition, it is enough to bind him that he shall not alienate; and for that there are other good means without this immoderate restraint which extends in perpetuity.

The other commendation was that the times may be such as before have been in regard of civil and intestine wars, when all the subjects of the land shall be traitors [by the *will he n'ill he*],[1] and treason shall be a captious crime: in which time it were pity that no refuge should be left to preserve great and noble houses; so that although the persons and lives of men incur peril according to the nature and fortune of the time, yet their posterity and lineage should not be merely ruinated. To this I answer that I think and hope that I shall never see such a time, and my sight is too dim and my prospect too short to foresee it; but such foreseeing men may likewise foresee this with the rest, — that if force prevail above lawful regiment, how easy it will be to procure an act of Parliament to pass according to the humour and bent of the State, to sweep away all these perpetuities which are already slandered and discredited; and so no such relief in those times according to their supposal.

But in the meantime without these far reaches, we should consider the perils immanent in the present estate; who see in this time the desperate humours of divers men in devising treason and conspiracies;

[1] This is a very conjectural rendering of the MS.

who being such men that, in the course of their ambition or other furious apprehensions, they make very small or no account of their proper lives; if to the common desire and sweetness of life the natural regard for their posterity be not adjoined, the bridle, I doubt, will be too weak: for when they see that whatever comes of themselves, yet their posterity shall not be overthrown, they will be made more audacious to attempt such matters.

Also another reason of State may be added, which I shall but touch, knowing that I speak before grave and wise persons: and that is the peril which necessarily grows to any State, if greatness of men's possessions be in discontented races; the which must necessarily follow if, notwithstanding the attainder of the father, the son shall succeed in his line and estate.

But omitting these considerations of state and civil policy, let us come to considerations of humanity.

A man is taken prisoner in war. Life and liberty are more precious than lands or goods. For his ransom it is necessary for him to sell. If then he be shackled in such conveyances, he is as much captive to his conveyances as to his enemy, and so must die in misery to make his son and heir after him live in jollity.

Some young heir when he first comes to the float of his living outcompasseth himself in expenses; yet perhaps in good time reclaims himself, and has a desire to recover his estate; but has no readier way than to sell a parcel to free himself from the biting and consuming interest. But now he cannot [redeem] himself with his proper means, and though he be reclaimed in mind, yet can he not remedy his estate.

So, passing over the considerations of humanity, let us now consider the discipline of families. And touching this I will speak in modesty and under correction. Though I reverence the laws of my country, yet I observe one defect in them; and that is, there is no footstep there of the reverend *potestas patria* which was so commended in ancient times. A man can sue his father; he can be a witness against his father; the father cannot intermeddle with the goods of his son; [the son] is not bound by the law to grant maintenance to his father if he does not choose: if [indeed] the father be killed by the son, which is a case rare and monstrous, he shall be drawn on a hurdle; but in other cases the father and son are as strangers. This only yet remains: if the father has any patrimony and the son be disobedient, he may disherit him; if he will not deserve his blessing he shall not have his living. But this device of perpetuities has taken this power from the father likewise; and has tied and made subject (as the proverb is) the parents to their cradle, and so notwithstanding he has the curse of his father, yet he shall have the land of his grandfather. And what is more, if the son marry himself to a woman diffamed, so that she bring bastard slips and false progeny into the family, yet the issue of this woman shall inherit the land, for that the first perpetuator will have it so, who is dead a long time before. And these are the bad effects, besides those of fraud and deceit. And I well know a difference between speaking in the Parliament and before the judges in an argument of law.

Touching the third inconvenience, which is of perplexed and obscure questions; it is a good principle,

in obscuris quod minimum est sequamur. Let the law be guide so far as possibly it can be, and make the fewest questions; *nam quod certum non est justum non est.* And if you look at the case of Earl and Snow in Plowd. Comm. and Delamer's case, you will find the principal reason of the judgment to be no other than this: for it is said, if it were otherwise, many perplexed and intricate questions would arise. Now if this clause which is put in perpetuities be considered, that is to say, that the land shall remain upon forfeiture to him who is next in limitation, as if the other committing the forfeiture were dead, it is not possible for the most learned judge in the land to answer the questions. For there will be heirs without death, the which is a thing prodigious in our law, and is a common highway to many subtle questions; and though there be a like clause of fiction in some statutes, as in the statute of 11 H. VII. it is necessary to note a difference: for statutes can dispense with the grounds of law, which stoops to them and is controlled by them: but no such power have the words of a deed.

But admitting all these inconveniences, says Mr. Atkinson, if you overthrow these perpetuities in uses, yet will there be new devices to do the like by way of possession. Which I do not see how it can be done, for that the grounds of conveyances in possession are more strict; and *secundi surculi fraudum minus periculosi.* When men see that this device shall be overthrown, they will have little courage to invent the like. And I doubt not but that there will be new attempts of fraud, but it will be long before they grow to such extremity as it is now. And as for the making of like restraints by Will, it is to be noted, though

CASE OF THE POST-NATI.

PREFACE.

THIS argument was first printed in 1641, together with two of Bacon's speeches in Parliament on the union, "by the author's copy." There is a copy in the British Museum, (King's MSS. 17 A. LVI. p. 262.) corrected by Bacon.

It was delivered in *Calvin's Case* (reported by Coke, 7 Rep. 1.), before Easter Term, 1608, in the Exchequer Chamber, whither an Assize by Calvin and a Chancery suit for discovery of evidence had been adjourned from the King's Bench and the Chancery respectively.

Bacon insists on its being "no feigned case," though "used by His Majesty to give an end to this question:" but, however real the disseisors Richard and Nicholas Smith may have been, one can hardly doubt that the proceedings were from the beginning concerted with the Crown.

The Commissioners appointed under 2 Jac. c. 2. to treat of the Union of England and Scotland had recommended,[1] *inter alia*, an act to declare that, by the Common Law, natives of either kingdom born after James's accession to the Crown of England were naturalised in both. The Commons not assenting, com-

[1] Moore, Rep. 790.

mittees of both Houses met February 25th, 1606–7, Bacon being the spokesman of the Commons to introduce the subject, and Common Lawyers, Civilians, and others following in parts assigned to them. The Lords called on the Judges for their advice; and on the 26th, Popham, Coke, and Fleming, the three chiefs, and seven others gave their opinion in favour of the Postnati, Walmsley being the only dissentient: the Chancellor Ellesmere had in the conference shown his inclination to agree with the majority.

The Commons remained unconvinced and would not pass any declaratory act (H. C. journ. 28° March *et passim*), and the opinions of the Judges were not as efficacious as a judgment for settling the question.[1]

On the 29th of October, after the close of the session, the plaintiff in this case, an infant born since James's accession, received a grant of the lands in question, which had become forfeited by an attainder;[2] and the writ herein is tested 3rd November, four days after. I suppose the Chancery suit was added for the purpose of having a decision binding every possible tribunal.

Popham had died in the interval. The other Judges who had already delivered opinions in the House of Lords retained them on this occasion, and of the five additional voices four were on the same side, Foster alone going with Walmsley. I believe we have only Coke's summary of the judgment at Common Law: Lord Ellesmere published his own in a pamphlet, which is reprinted in the State Trials, Vol. II.

[1] See Lord Ellesmere's judgment. [2] Docket in State Paper Office.

THE ARGUMENT

OF SIR FRANCIS BACON, KNIGHT,

HIS MAJESTY'S SOLICITOR-GENERAL,

IN THE CASE OF THE POST-NATI OF SCOTLAND,

IN THE EXCHEQUER CHAMBER,

BEFORE THE LORD CHANCELLOR, AND ALL THE JUDGES OF ENGLAND.

May it please your Lordships,

THIS case your lordships do well perceive to be of exceeding great consequence. For whether you do measure it by place, it reacheth not only to the realm of England, but to the whole island of Great Britain; or whether you measure it by time, it extendeth not only to the present time, but much more to future generations,

Et nati natorum, et qui nascentur ab illis:

And therefore as it is to receive at the bar a full and free debate, so I doubt not but it shall receive from your lordships a sound and just resolution according to law, and according to truth. For, my lords, though he were thought to have said well, that said it for his word, *Rex fortissimus;* yet he was thought to have

said better, even in the opinion of the king himself, that said, *Veritas fortissima, et prævalet.*

And I do much rejoice to observe such a concurrence in the whole carriage of this cause to this end, that truth may prevail. The case no feigned or framed case; but a true case between true parties: The title handled formerly in some of the king's courts, and freehold upon it; used indeed by his Majesty in his high wisdom to give an end to this great question, but not raised; *occasio*, as the schoolmen say, *arrepta, non porrecta:* The case argued in the king's bench by Mr. Walter with great liberty, and yet with good approbation of the court: The persons assigned to be of counsel on that side, inferior to none of their quality and degree in learning; and some of them most conversant and exercised in the question: The judges in the king's bench have adjourned it to this place for conference with the rest of their brethren: Your lordship, my lord chancellor, though you be absolute judge in the court where you sit, and might have called unto you such assistance of judges as to you had seemed good, yet would not forerun or lead in this case by any opinion there to be given; but have chosen rather to come yourself to this assembly: — all tending, as I said, to this end, whereunto I for my part do heartily subscribe, *ut vincat veritas*, that truth may first appear, and then prevail. And I do firmly hold, and doubt not but I shall well maintain, that this is the truth, that Calvin the plaintiff is *ipso jure* by the law of England a natural born subject to purchase freehold, and to bring real actions within England.

In this case I must so consider the time, as I must much more consider the matter. And therefore though

it may draw my speech into farther length; yet I dare not handle a case of this nature confusedly, but purpose to observe the ancient and exact form of pleadings; which is,

First, to explain or induce.

Then, to confute, or answer objections.

And lastly, to prove, or confirm.

And first for explanation. The outward question in this case is no more, but, Whether a child, born in Scotland since his Majesty's happy coming to the crown of England, be naturalised in England, or no? But the inward question or state of the question evermore beginneth where that which is confessed on both sides doth leave.

It is confessed, that if these two realms of England and Scotland were united under one law and one parliament, and thereby incorporated and made as one kingdom, that the *Post-natus* of such an union should be naturalized.

It is confessed, that both realms are united in the person of our sovereign; or, because I will gain nothing by surreption in the putting of the question, that one and the same natural person is king of both realms.

It is confessed, that the laws and parliaments are several.

So then, Whether this privilege and benefit of naturalization be an accessory or dependency upon that which is one and joint, or upon that which is several, hath been, and must be the depth of this question. And therefore your lordships do see the state of this question doth evidently lead me by way of inducement

to speak of three things: The king, the law, and the privilege of naturalization. For if you well understand the nature of the two principals, and again the nature of the accessory; then shall you discern, to whether principal the accessory doth properly refer, as a shadow to a body, or iron to an adamant.

And here your lordships will give me leave in a case of this quality, first to visit and open the foundations and fountains of reason, and not begin with the positions and eruditions of a municipal law; for so was it Plowd. done in the great case of the mines; and so ought it to be done in all cases of like nature. And this does not at all detract from the sufficiency of our laws, as incompetent to decide their own cases, but rather addeth a dignity unto them, when their reason appearing as well as their authority doth shew them to be as fine monies, which are current not only by the stamp, because they are so received, but by the natural metal, that is, the reason and wisdom of them.

And master Littleton himself in his whole book doth commend but two things to the professors of the law by the name of his sons; the one, the inquiring and searching out the reasons of the law; and the other, the observing of the forms of pleadings. And never was there any case that came in judgment that required more that Littleton's advice to be followed[1] in those two points, than doth the present case in question. And first of the king.

It is evident that all other commonwealths, monarchies only excepted, do subsist by a law precedent. For where authority is divided amongst many officers,

[1] So in MS. If not corrupt it must mean, as Mr. Spedding suggests to me, "that advice of Littleton."

and they not perpetual, but annual or temporary, and not to receive their authority but by election, and certain persons to have voice only to that election, and the like; these are busy and curious frames, which of necessity do pre-suppose a law precedent, written or unwritten, to guide and direct them: but in monarchies, especially hereditary, that is, when several families, or lineages of people do submit themselves to one line, imperial or royal, the submission is more natural and simple; which afterwards by laws subsequent is perfected and made more formal, but it is grounded upon nature.

That this is so, it appeareth notably in two things; the one the platforms and patterns which are found in nature of monarchies; the other the original submissions, and their motives and occasions. The platforms are three:

The first is that of a father, or chief of a family; who governing over his wife by prerogative of sex, over his children by prerogative of age, and because he is author unto them of being, and over his servants by prerogative of virtue and providence (for he that is able of body, and improvident of mind, is *natura servus*) is the very model of a king. So is the opinion of Aristotle, lib. iii. *Pol.* cap. 14. where he saith, *Verum autem regnum est, cum penes unum est rerum summa potestas: quod regnum procurationem familiæ imitatur* And therefore Lycurgus, when one counselled him to dissolve the kingdom, and to establish another form of estate, answered, "Sir, begin to do that which you advise first at home in your own house:" noting, that the chief of a family is as a king; and that those that can least endure kings abroad, can be content to be

kings at home. And this is the first platform, which we see is merely natural.

The second is that of a shepherd and his flock, which, Xenophon saith, Cyrus had ever in his mouth. For shepherds are not owners of the sheep; but their office is to feed and govern: no more are kings proprietaries or owners of the people: for God is sole owner of people. *The nations*, as the Scripture saith, *are his inheritance:* but the office of kings is to govern, maintain, and protect people. And it is not without a mystery, that the first king that was instituted by God, David, (for Saul was but an untimely fruit,) was translated from a shepherd, as you have it in Psalm lxxviii. *Et elegit David servum suum, de gregibus ovium sustulit eum, — pascere Jacob servum suum, et Israel hæreditatem suam.* This is the second platform; a work likewise of nature.

The third platform is the government of God himself over the world, whereof lawful monarchies are a shadow. And therefore both amongst the Heathen, and amongst the Christians, the word, sacred, hath been attributed unto kings, because of the conformity of a monarchy with a divine Majesty: never to a senate or people. And so you find it twice in the lord Coke's Reports; once in the second book, the bishop of Winchester's case; and his fifth book, Cawdrie's case; and more anciently in the 10 of H. VII. fol. 18. *Rex est persona mixta cum sacerdote;* an attribute which the senate of Venice, or a canton of Swisses, can never challenge. So, we see, there be precedents or platforms of monarchies, both in nature, and above nature; even from the monarch of heaven and earth to the king, if you will, in an hive of bees. And

therefore other states are the creatures of law: and this state only subsisteth by nature.

For the original submissions, they are four in number: I will briefly touch them. The first is paternity or patriarchy, which was when a family growing so great as it could not contain itself within one habitation, some branches of the descendants were forced to plant themselves into new families, which second families could not by a natural instinct and inclination but bear a reverence, and yield an obeisance to the eldest line of the ancient family from which they were derived.

The second is, the admiration of virtue, or gratitude towards merit, which is likewise naturally infused into all men. Of this Aristotle putteth the case well; when it was the fortune of some one man, either to invent some arts of excellent use towards man's life, or to congregate people, that dwelt scattered, into one place, where they might cohabit with more comfort, or to guide them from a more barren land to a more fruitful, or the like: upon these deserts, and the admiration and recompense of them, people submitted themselves.

The third, which was the most usual of all, was conduct in war, which even in nature induceth as great an obligation as paternity. For as men owe their life and being to their parents in regard of generation, so they owe it also to saviours in the wars in regard of preservation. And therefore we find in chap. xviii. of the book of Judges, ver. 22. *Dixerunt omnes viri ad Gideon, Dominare nostri, tu et filii tui, quoniam servasti nos de manu Madian.* And so we read when it was brought unto the ears of Saul, that the people sung in the streets, *Saul hath killed his thousand, and David his*

ten thousand of enemies, he said straightways: *Quid ei superest nisi ipsum regnum?* For whosoever hath the military dependence, wants little of being king.

The fourth is an inforced submission, which is conquest, whereof it seemed Nimrod was the first precedent, of whom it is said; *Ipse cœpit potens esse in terra, et erat robustus venator coram Domino.* And this likewise is upon the same root, which is the saving or gift as it were of life and being. For the conqueror hath power of life and death over his captives; and therefore where he giveth them themselves, he may reserve upon such a gift what service and subjection he will. All these four submissions are evident to be natural and more ancient than law.

To speak therefore of law, which is the second part of that which is to be spoken of by way of inducement.

Law no doubt is the great organ by which the sovereign power doth move, and may be truly compared to the sinews in a natural body, as the sovereignty may be compared to the spirits: for if the sinews be without the spirits, they are dead and without motion; if the spirits move in weak sinews, it causeth trembling: so the laws, without the king's power, are dead; the king's power, except the laws be corroborated, will never move constantly, but be full of staggering and trepidation. But towards the king himself the law doth a double office or operation: the first is to intitle the king, or design him: and in that sense Bracton saith well, lib. 1. fol. 5. and lib. 3. fol. 107. *Lex facit quod ipse sit Rex;* that is, it defines his title; as in our law, That the kingdom shall go to the issue female; that it shall not be departable among daughters; that the half-blood shall be respected, and other

points differing from the rules of common inheritance. The second is, — that whereof we need not fear to speak in good and happy times, such as these are, — to make the ordinary power of the king more definite or regular. For it was well said by a father, *plenitudo potestatis est plenitudo tempestatis.* And although the king, in his person, be *solutus legibus*, yet his acts and grants are limited by law, and we argue them every day.

But I demand, Do these offices or operations of law evacuate or frustrate the original submission, which was natural? Or shall it be said that all allegiance is by law? No more than it can be said, that *potestas patria*, the power of the father over the child, is by law. And yet no doubt laws do diversely define of that also; the law of some nations having given the fathers power to put their children to death; others, to sell them thrice; others, to disinherit them by testament at pleasure, and the like. Yet no man will affirm, that the obedience of the child is by law, though laws in some points do make it more positive: and even so it is of allegiance of subjects to hereditary monarchs, which is corroborated and confirmed by law, but is the work of the law of nature. And therefore you shall find the observation true, and almost general in all states, that their lawgivers were long after their first kings, who governed for a time by natural equity without law: so was Theseus long before Solon in Athens: so was Eurytion *et* Sous long before Lycurgus in Sparta: so was Romulus long before the *Decemviri.* And even amongst ourselves there were more ancient kings of the Saxons; and yet the laws ran under the name of Edgar's laws. And in the refounding of the kingdom

in the person of William the Conqueror, when the laws were in some confusion for a time, a man may truly say that king Edward I. was the first lawgiver, who, enacting some laws and collecting others, brought the law to some perfection. And therefore I will conclude this point with the stile which divers acts of parliaments do give unto the king: which term him very effectually and truly, "our natural sovereign and liege lord." And as it was said by a principal judge here present when he served in another place, and question was moved by some occasion of the title of Bullein's lands, that he would never allow that queen Elizabeth (I remember it for the efficacy of the phrase) should be a statute Queen, but a common-law Queen: so surely I shall hardly consent that the King shall be esteemed or called only our rightful sovereign, or our lawful sovereign, but *our natural liege sovereign;* as acts of parliament speak: for as the common law is more worthy than the statute law; so the law of nature is more worthy than them both.

Having spoken now of the king and the law, it remaineth to speak of the privilege and benefit of naturalization itself; and that according to the rules of the law of England.

Naturalization is best discerned in the degrees whereby the law doth mount and ascend thereunto. For it seemeth admirable unto me, to consider with what a measured hand and with how true proportions our law doth impart and confer the several degrees of this benefit. The degrees are four.

The first degree of persons, as to this purpose, that the law takes knowledge of, is an *alien enemy;* that is, such a one as is born under the obeisance of a prince

or state that is in hostility with the king of England. To this person the law giveth no benefit or protection at all, but if he come into the realm after war proclaimed, or war in fact, he comes at his own peril, he may be used as an enemy: for the law accounts of him, but, as the Scripture saith, as of a spy that comes to see the weakness of the land. And so is 2 Ric. III. fol. 2. Nevertheless this admitteth a distinction. For if he come with safe-conduct otherwise it is: for then he may not be violated, either in person or goods. But yet he must fetch his justice at the fountain-head, for none of the conduit pipes are open to him; he can have no remedy in any of the king's courts; but he must complain himself before the king's privy council: there he shall have a proceeding summary from hour to hour, the cause shall be determined by natural equity, and not by the rules of law; and the decree of the council shall be executed by aid of the chancery, as in 13 E. IV. And this is the first degree.

The second person is an *alien friend*, that is, such a one as is born under the obeisance of such a king or state as is confederate with the king of England, or at least not in war with him. To this person the law allotteth this benefit, that as the law accounts that the hold it hath over him is but a transitory hold, (for he may be an enemy,) so the law doth indue him but with a transitory benefit, that is, of movable goods and personal actions. But for freehold, or lease, or actions real or mixt, he is not enabled, except it be in *auter droit*. And so is 9 E. IV. fol. 7. 19 E. IV. fol. 6. 5 Mar. and divers other books.

The third person is a *denizen*, using the word properly, (for sometimes it is confounded with a natural

born subject): This is one that is but *subditus insitivus*, or *adoptivus*, and is never by birth, but only by the king's charter, and by no other mean, come he never so young into the realm, or stay he never so long. Mansion or habitation will not indenize him, no, nor swearing obedience to the king in a leet, which doth in-law the subject; but only, as I said, the king's grace and gift. To this person the law giveth an ability and capacity abridged, not in matter, but in time. And as there was a time when he was no subject, so the law doth not acknowledge him before that time. For if he purchase freehold after his denization, he may take it; but if he have purchased any before, he shall not hold it: so if he have children after, they shall inherit; but if he have any before, they shall not inherit. So as he is but privileged *a parte post*, as the schoolmen say, and not *a parte ante*.

The fourth and last degree is a *natural born subject*, which is evermore by birth, or by act of parliament; and he is complete and entire. For in the law of England there is *nil ultra*, there is no more subdivision or more subtle division beyond these: and therein it seemeth to me that the wisdom of the law, as I said, is to be admired both ways, both because it distinguisheth so far, and because it doth not distinguish farther. For I know that other laws do admit more curious distinction of this privilege; for the Romans had, besides *jus civitatis* which answereth to naturalization, *jus suffragii*. For although a man were naturalized to take lands and inheritance, yet he was not enabled to have a voice at passing of laws, or at election of officers. And yet farther they have *jus petitionis*, or *jus honorum*. For though a man had voice, yet he was not capable

of honour and office. But these be the devices commonly of popular or free estates, (which are jealous whom they take into their number,) and are unfit for monarchies; but by the law of England, the subject that is natural born hath a capacity or ability to all benefits whatsoever: I say capacity or ability; but to reduce *potentiam in actum*, is another case. For an earl of Ireland, though he be naturalized in England, yet hath no voice in the parliament of England, except he have either a call by writ, or creation by patent; but he is capable of either. But upon this quadripartite division of the ability of persons I do observe to your lordships three things, being all effectually pertinent to the question in hand.

The first is, that if any man conceive that the reasons for the *Post-nati* might serve as well for the *Ante-nati*, he may by the distribution which we have made plainly perceive his error. For the law looketh not back, and therefore cannot by any *ex post facto*, after birth, alter the state of the birth; wherein no doubt the law hath a grave and profound reason; which is this, in a few words, *Nemo subito fingitur; aliud est nasci, aliud fieri:* we indeed respect and affect more these worthy gentlemen of Scotland whose merits and conversations we know; but the law that proceeds upon general reason, and looks upon no men's faces, affecteth and privilegeth those which drew their first breath under the obeisance of the king of England.

The second point is, that by the former distribution it appeareth that there be but two conditions by birth, either *alien*, or *natural born*, (*nam tertium penitus ignoramus*). It is manifest then, that if the *Post-nati* of Scotland be not natural born, they are alien born, and

in no better degree at all than Flemings, French, Italians, Spanish, Germans, and others, which are all at this time alien friends, by reason his Majesty is in peace with all the world.

The third point seemeth to me very worthy the consideration; which is, that in all the distributions of persons, and the degrees of abilities or capacities, the king's act is all in all without any manner of respect to law or parliament. For it is the king that makes an alien enemy, by proclaiming a war, wherewith the law or parliament intermeddle not. So the king only grants safe-conducts, wherewith law and parliament intermeddle not. It is the king likewise that maketh an alien friend, by concluding a peace, wherewith law and parliament intermeddle not. It is the king that makes a denizen by his charter, absolutely of his prerogative and power, wherewith law and parliament intermeddle not. And therefore it is strongly to be inferred, that as all these degrees depend wholly upon the king's act, and no ways upon law or parliament; so the fourth, although it cannot be wrought by the king's patent, but by operation of law, yet that the law, in that operation, respecteth only the king's person, without respect of subjection to law or parliament. And thus much by way of explanation and inducement: which being all matter in effect confessed, is the strongest ground-work to that which is contradicted or controverted.

There followeth the confutation of the arguments on the contrary side.

THAT which hath been materially objected, may be reduced to four heads.

The first is, that the privilege of naturalization followeth allegiance, and that allegiance followeth the kingdom.

The second is drawn from that common ground, *cum duo jura concurrunt in una persona, æquum est ac si essent in duobus;* a rule, the words whereof are taken from the civil law; but the matter of it is received in all laws; being a very line or rule of reason, to avoid confusion.

The third consisteth of certain inconveniences conceived to ensue of this general naturalization, *ipso jure.*

The fourth is not properly an objection, but a preoccupation of an objection or proof on our part, by a distinction devised between countries devolute by descent, and acquired by conquest.

For the first, it is not amiss to observe that those who maintain this new opinion, whereof there is *altum silentium* in our books of law, are not well agreed in what form to utter and express it. For some say that allegiance hath respect to the law, some to the crown, some to the kingdom, some to the body politic of the king: so there is a confusion of tongues amongst them, as it commonly cometh to pass in opinions that have their foundations in subtlety and imagination of man's wit, and not in the ground of nature. But to leave their words, and to come to their proofs: they endeavour to prove this conceit by three manner of proofs: first, by reason; then, by certain inferences out of statutes; and lastly, by certain book-cases, mentioning and reciting the forms of pleadings.

The reason they bring is this; that naturalization is an operation of the law of England; and so indeed it is; that may be the true *genus* of it.

or Warwick, intending the possessions of the dukes of Somerset or earls of Warwick. So we see earls sign, Salisbury, Northampton, for the earls of Salisbury and Northampton. And in the very same manner the statute speaks, allegiance of England, for allegiance of the king of England. Nay more, if there had been no variety in the penning of that statute, this collection had had a little more force; for those words might have been thought to have been used of purpose and in propriety; but you may find in other three several places of the same statute, allegiance and obeisance of the king of England, and especially in the material and concluding place, that is to say, children whose parents were at the time of their birth at the faith and obeisance of the king of England. So it is manifest by this indifferent and promiscuous use of both phrases, the one proper, the other improper, that no man can ground any inference upon these words without danger of cavillation.

The second statute out of which they infer, is a statute made in 32 Hen. VIII. ca. 16. touching the policy of strangers tradesmen within this realm. For the parliament finding that they did eat the Englishmen out of trade, and that they entertained no apprentices but of their own nation, did prohibit that they should receive any apprentice but the king's subjects. In which statute is said, that in nine several places there is to be found this context of words, "aliens born out of the king's obedience;" which is pregnant, say they, and doth imply that there be aliens born within the king's obedience. Touching this inference, I have heard it said, *qui hærit in litera, hæret in cortice;* but this is not worthy the name of *cortex*, it is but *muscus*

corticis, the moss of the bark. For it is evident that the statute meant to speak clearly and without equivocation, and to a common understanding. Now then there are aliens in common reputation, and aliens in precise construction of law; the statute then meaning not to comprehend Irishmen, or Jerseymen, or Calaismen, for explanation-sake, lest the word alien might be extended to them in a vulgar acceptance, added those further words, *born out of the king's obedience*. Nay, what if we should say, that those words, according to the received laws of speech, are no words of difference or limitation, but of declaration or description of an alien, as if it had been said, with a *videlicet* — aliens; that is, such as are born out of the king's obedience? they cannot put us from that construction. But sure I am, if the bark make for them, the pith makes for us; for the privilege of liberty which the statute means to deny to aliens of entertaining apprentices, is denied to none born within the king's obedience, call them aliens or what you will. And therefore by their reason, a *Post-natus* of Scotland shall by that statute keep what stranger apprentices he will, and so is put in the degree of an English.

The third statute out of which inference is made, is the statute of 14 E. III.[1] *cap. solo*, which hath been said to be our very case; and I am of that opinion too, but directly the other way. Therefore to open the scope and purpose of that statute: after that the title to the crown of France was devolute to K. E. III. and that he had changed his title, changed his arms, changed his seal, as his Majesty hath done, the subjects of England, saith the statute, conceived a fear that the realm of

[1] Stat. 5.

England might become subject to the realm of France, or to the king as king of France. And I will give you the reasons of the double fear, that it should become subject to the realm of France. They had this reason of fear; Normandy had conquered England, Normandy was feudal of France, therefore because the superior seigniory of France was now united in right with the tenancy of Normandy, and that England, in regard of the conquest, might be taken as a perquisite to Normandy, they had probable reason to fear that the kingdom of England might be drawn to be subject to the realm of France. The other fear, that England might become subject to the king as king of France, grew no doubt of this foresight; that the kings of England might be like to make their mansion and seat of their estate in France, in regard of the climate, wealth, and glory of that kingdom; and thereby the kingdom of England might be governed by the king's mandates and precepts issuing as from the king of France. But they will say, whatsoever the occasion was, here you have the difference authorized of subjection to a king generally, and subjection to a king as king of a certain kingdom. But to this I give an answer three-fold:

First, it presseth not the question; for doth any man say that a *Post-natus* of Scotland is naturalised in England, because he is a subject of the king as king of England? No, but generally because he is the king's subject.

Secondly, The scope of this law is to make a distinction between crown and crown; but the scope of their argument is to make a difference between crown and person.

Lastly, this statute, as I said, is our very case retorted against them. For this is a direct statute of separation, which pre-supposeth that the common law had made an union of the crowns in some degree, by virtue of the union of the king's person, if this statute had not been made to stop and cross the course of the common law in that point: as if Scotland now should be suitors to the king, that an act might pass to like effect, and upon like fears. And therefore if you will make good your distinction in this present case, shew us a statute for it. But I hope you can shew no statute of separation between England and Scotland. And if any man say that this was a statute declaratory of the common law, he doth not mark how it is penned; for after a kind of historical declaration in the preamble, that England was never subject to France, the body of the act is penned thus: "The king doth grant and establish;" which are words merely introductive *novæ legis*, as if the king gave a charter of franchise, and did invest, by a donative, the subjects of England with a new privilege or exemption, which by the common law they had not.

To come now to the book-cases which they put; which I will couple together, because they receive one joint answer.

The first is 42 E. III. fol. 9. where the book saith, exception was taken that the plaintiff was born in Scotland at Ross, out of the allegiance of England.

The next is 22 H. VI. fol. 38. Adrian's case; where it is pleaded that a woman was born at Bruges, out of the allegiance of England.

The third is 13 Eliz. Dyer, fol. 300. where the case begins thus: *Doctor Story qui notorie dignoscitur esse*

subditus regni Angliæ. In all these three, say they, it is pleaded, that the party is subject of the *kingdom* of England, and not of the *king* of England.

To these books I give this answer, that they be not the pleas at large, but the words of the reporter, who speaks compendiously and *narrativè*, and not according to the solemn words of the pleading. If you find a case put, that it is pleaded a man was seised *in fee-simple*, you will not infer upon that, that the words of the pleading were *in feodo simplici*, but *sibi et hæredibus suis*. But shew me some precedent of a pleading at large, of *natus sub ligeantia regni Angliæ;* for whereas Mr. Walter said that pleadings are variable in this point, he would fain bring it to that; but there is no such matter; for the pleadings are constant and uniform in this point: they may vary in the word *fides*, or *ligeantia*, or *obedientia*, and some other circumstances; but in the form of *regni* and *regis* they vary not: neither can there, as I am persuaded, be any one instance shewed forth to the contrary. See 9 E. 4 Baggot's Assize, fol. 7. where the pleading at large is entered in the book; there you have *alienigena natus extra ligeantiam domini regis Angliæ.* See the precedents in the book of entries,[1] pl. 7. and two other places, for there be no more: and there you shall find still *sub ligeantia domini regis*, or *extra ligeantiam domini regis.* And therefore the forms of pleading, which are things so reverend, and are indeed towards the reasons of the law as *palma* and *pugnus*, containing the reasons of the law opened or unfolded, or displayed, they make all for us. And for the very words of reporters in books, you must acknowledge and say,

[1] Blank left in MS.

ilicet obruimur numero. For you have 22 Ass. pl. 25. 27 Ass. the prior of Shells' case, pl. 48. 14 H. IV. fol. 19. 3 H. VI. fol. 55. 6 H. VIII. by my lord Dyer, fol. 2. In all these books the very words of the reporters have "the allegiance of the king," and not, the allegiance of England. And the book in the 42 E. III. which is your best book, although while it is tossed at the bar you have sometimes the words "allegiance of England," yet when it comes to Thorp, chief justice, to give the rule, he saith, "we will be certified by the roll, whether Scotland be within the allegiance of the king." Nay, that farther form of pleading beats down your opinion: that it sufficeth not to say that he is born out of the allegiance of the king, and stay there, but he must shew in the affirmative, under the allegiance of what king or state he was born. The reason whereof cannot be, because it may appear whether he be a friend or an enemy, for that in a real action is all one: nor it cannot be because issue shall be taken thereupon; for the issue must arise on the other side upon *indigena* pleaded and traversed. And therefore it can have no other reason, but to apprize the court more certainly, that the country of the birth is none of those that are subject to the king. As for the trial, that it should be impossible to be tried, I hold it not worth the answering; for the *Venire facias* shall go either where the natural birth is laid, although it be but by fiction, or if it be laid according to the truth, it shall be tried where the action is brought. Otherwise you fall upon a main rock, that breaketh your argument in pieces: for how should the birth of an Irishman be tried, or of a Jerseyman? nay, how should the birth of a subject be tried, that is born of English

parents in Spain or Florence, or any part of the world? For to all these the like objection of trial may be made, because they are within no counties: and this receives no answer. And therefore I will now pass on to the second main argument.

It is a rule of the civil law, say they, *Cum duo jura, etc.* when two rights do meet in one person, there is no confusion of them, but they remain still in the eye of law distinct, as if they were in several persons: and they bring examples of it of one man bishop of two sees, or one parson that is rector of two churches. They say this unity in the bishop or the rector doth not create any privity between the parishioners or dioceseners, more than if there were several bishops, or several parsons. This rule I allow, (as was said,) to be a rule not of the civil law only but of common reason, but [it][1] receiveth no forced or coined but a true and sound distinction or limitation, which is, that it evermore faileth and deceiveth in cases where there is any vigour or operation of the natural person; for generally in corporations the natural body is but *sufful-cimentum corporis corporati*, it is but as a stock to uphold and bear out the corporate body; but otherwise it is in the case of the crown, as shall be manifestly proved in due place. But to shew that this rule receiveth this distinction, I will put but two cases; the statute of 21 H. VIII. ordaineth that a marquis may retain six chaplains qualified, a lord treasurer of England four, a privy councillor three. The lord treasurer Paulet was marquis of Winchester, lord treasurer of England, and privy councillor, all at once. The question was, whether he should qualify thirteen chaplains? Now

[1] Not in MS.

by the rule *Cum duo jura* he should; but adjudged, he should not. And the reason was, because the attendance of chaplains concerned and respected his natural person; he had but one soul, though he had three offices. The other case which I will put is the case of homage. A man doth homage to his lord for a tenancy held of the manor of Dale; there descendeth unto him afterwards a tenancy held of the manor of Sale, which manor of Sale is likewise in the hands of the same lord. Now by the rule *Cum duo jura*, he should do homage again; two tenancies and two seignories, though but one tenant and one lord; *æquum est ac si esset in duobus:* but ruled that he should not do homage again: nay in the case of the king he shall not pay a second respect of homage, as upon grave and deliberate consideration it was resolved, 42 Hen. VIII. and *usus scaccarii*, as there is said, accordingly. And the reason is no other but because when a man is sworn to his lord, he cannot be sworn over again: he hath but one conscience, and the obligation of this oath trencheth between the natural person of the tenant and the natural person of the lord. And certainly the case of homage and tenure, and of homage liege, which is our case, are things of a near nature, save that the one is much inferior to the other; but it is good to behold these great matters of state in cases of a lower element, as the eclipse of the sun is used to be in a pail of water.

The third main argument containeth certain supposed inconveniences, which may ensue of a general naturalization *ipso jure;* of which kind three have been chiefly remembered.

The first is the loss of profit to the king upon letters of denization and purchases of aliens.

The second is the concourse of Scotsmen into this kingdom, to the enfeebling of that realm of Scotland in people, and the impoverishing of this realm of England in wealth.

The third is, that the reason of this case stayeth not within the compass of the present case; for although it were some reason that Scotsmen were naturalized, being people of the same island and language, yet the reason which we urge, which is, that they are subjects to the same king, may be applied to persons every way more estranged from us than they are; as if in future time, in the king's descendants, there should be a match with Spain, and the dominions of Spain should be united with the crown of England, by our reason, (say they) all the West Indies should be naturalized; which are people not only *alterius soli*, but *alterius cœli*.

To these conceits of inconvenience how easy it is to give answer, and how weak they are in themselves, I think no man that doth attentively ponder them can doubt; for how small revenue can arise of such denizations, and how honourable were it for the king to take escheats of his subjects, as if they were foreigners, (for seizure of aliens' lands are in regard the king hath no hold or command of their persons and services) every one may perceive. And for the confluence of Scotsmen, I think, we all conceive the spring-tide is past at the King's first coming in; and yet we see very few families of them throughout the cities and boroughs of England. And for the naturalizing of the Indies, we can readily help that, when the case comes; for we can make an act of parliament of separation if we like not their consort. But these

being reasons politic, and not legal, and we are not now in parliament, but before a judgment seat, I will not meddle with them, especially since I have one answer which avoids and confounds all their objections in law; which is, that the very self-same objections do hold in countries purchased by conquest. For in subjects obtained by conquest, it were more profit to indenizate by the poll; in subjects obtained by conquest, they may come in too fast; and if king Henry VII. had accepted the offer of Christopher Columbus, whereby the crown of England had obtained the Indies by conquest or occupation, all the Indies had been naturalized by the confession of the adverse part. And therefore since it is confessed, that subjects obtained by conquest are naturalised, and that all these objections are common and indifferent as well to case of conquest as case of descent, these objections are in themselves destroyed.

And therefore, to proceed now to overthrow that distinction of descent and conquest. Plato saith well, the strongest of all authorities is, if a man can allege the authority of his adversary against himself: we do urge the confession of the other side, that they confess the Irish are naturalized; that they confess the subjects of the Isles of Jersey and Guernsey, and Berwick, to be naturalized, and the subjects of Calais and Tournay, when they were English, were naturalized; as you may find in the 5 Eliz. in Dyer, upon the question put to the judges by Sir Nicholas Bacon, lord keeper.

To avoid this, they fly to a difference, which is new-coined, and is, (I speak not to the disadvantage of the persons that use it; for they are driven to it *tanquam ad ultimum refugium;* but the difference itself,) it is, I

say, full of ignorance and error. And therefore, to take a view of the supports of this difference, they allege four reasons.

The first is, that countries of conquest are made parcel of England, because they are acquired by the arms and treasure of England. To this I answer, that it were a very strange argument, that if I wax rich upon the manor of Dale, and upon the revenue thereof purchase a close by it, that it should make that parcel of the manor of Dale. But I will set this new learning on ground with a question or case put. For I oppose them that hold this opinion with this question, If the king should conquer any foreign country by an army compounded of Englishmen and Scotsmen, (as it is like, whensoever wars are, so it will be,) I demand, Whether this country conquered shall be naturalized both in England and Scotland, because it was purchased by the joint arms of both? and if yea, whether any man will think it reasonable, that such subjects be naturalized in both kingdoms; the one kingdom not being naturalized toward the other?

These are the intricate consequences of conceits.

A second reason they allege is, that countries won by conquest become subject to the laws of England, which countries patrimonial are not, and that the law doth draw the allegiance, and allegiance naturalization

But to the major proposition of that argument, touching the dependency of allegiance upon law, somewhat hath been already spoken, and full answer shall be given when we come to it. But in this place it shall suffice to say, that the minor proposition is false: that is, that the laws of England are not superinduced upon any country by conquest; but that the old laws

remain until the king by his proclamation or letters patent declare other laws; and then if he will he may declare laws which be utterly repugnant, and differing from the laws of England. And hereof many ancient precedents and records may be shewed, that the reason why Ireland is subject to the laws of England is not *ipso jure* upon conquest, but grew by a charter of king John; and that extended but to so much as was then in the king's possession; for there are records in the time of king E. I. and II. of divers particular grants to sundry subjects of Ireland and their heirs, that they might use and observe the laws of England.

The third reason is, that there is a politic necessity of intermixture of people in case of subjection by conquest, to remove alienations of mind, and to secure the state; which holdeth not in case of descent. Here I perceive Mr. Walter hath read somewhat in matter of state; and so have I likewise; though we may both quickly lose ourselves in a cause of this nature.

I find by the best opinions, that there be two means to assure and retain in obedience countries conquered, both very differing, almost in extremes, the one towards the other.

The one is by colonies, and intermixture of people, and transplantation of families, which Mr. Walter spoke of; and it was indeed the Roman manner: but this is like an old relic, much reverenced and almost never used. But the other, which is the modern manner, and almost wholly in practice and use, is by garri sons and citadels, and lists or companies of men of war, and other like matters of terror and bridle.

To the first of these, which is little used, it is true that naturalization doth conduce, but to the latter it is

utterly opposite, as putting too great pride and means to do hurt in those that are meant to be kept short and low. And yet in the very first case, of the Roman proceeding, naturalization did never follow by conquest, during all the growth of the Roman empire; but was ever conferred by charters, or donations, sometimes to cities and towns, sometimes to particular persons, and sometimes to nations, until the time of Adrian the emperor, and the law *In orbe Romano:* and that law or constitution is not referred to title of conquest and arms only, but to all other titles; as by the donation and testament of kings, by submission and dedition of states, or the like: so as this difference was as strange to them as to us. And certainly I suppose it will sound strangely, in the hearing of foreign nations, that the law of England should *ipso facto* naturalize subjects of conquests, and should not naturalize subjects which grow unto the king by descent; that is, that it should confer the benefit and privilege of naturalization upon such as cannot at the first but bear hatred and rancour to the state of England, and have had their hand in the blood of the subjects of England, and should deny the like benefit to those that are conjoined with them by a more amiable mean; and that the law of England should confer naturalization upon slaves and vassals, for people conquered are no better in the beginning, and should deny it to freemen: I say, it will be marvelled at abroad, of what complexion the laws of England be made, that breedeth such differences. But there is little danger of such scandals; for this is a difference that the law of England never knew.

The fourth reason of this difference is, that in case

of conquest the territory united can never be separated again; but in case of descent there is a possibility; if his Majesty's line should fail, the kingdoms may sever again to their respective heirs; as in the case of 8 Hen. VI. where it is said, that if land descend to a man from the ancestor on the part of his father, and a rent issuing out of it from an ancestor on the part of the mother; if the party die without issue, the rent is revived. As to this reason, I know well the continuance of the king's line is no less dear to those that allege the reason, than to us that confute it. So as I do not blame the pressing of the reason: but it is answered with no great difficulty; for, first, the law doth never respect remote and foreign possibilities, as notably appeared in the great case between Sir Hugh Cholmley and Houlford in the exchequer, where one in the remainder, to the end to bridle tenant in tail from suffering a common recovery, granted his remainder to the king; and because he would be sure to have it out again without charge or trouble when his turn were served, he limited it to the king during the life of tenant in tail. Question grew, whether this grant of remainder were good, yea or no. And it was said to be frivolous and void, because it could never by any possibility execute; for tenant in tail cannot surrender; and if he died, the remainder likewise ceased. To which it was answered, that there was a possibility that it might execute, which was thus: Put case, that tenant in tail should enter into religion, having no issue; then the remainder should execute, and the king should hold the land during the natural life of tenant in tail, notwithstanding his civil death. But the court *una voce* exploded this reason, and said, that monasteries were down, and en-

tries into religion gone, and they must be up again ere this could be; and that the law did not respect such remote and foreign possibilities. And so we may hold this for the like. For I think we all hope, that neither of those days shall ever come, either for monasteries to be restored, or for the king's line to fail. But the true answer is, that the possibility subsequent, remote or not remote, doth not alter the operation of law for the present. For that should be as if, in case of the rent which you put, you should say, that in regard that the rent may be severed, it should be said to be *in esse* in the mean time, and should be grantable; which is clearly otherwise. And so in the principal case, if that should be, which God of his goodness forbid, *cessante causa cessat effectus*, the benefit of naturalization for the time to come is dissolved. But that altereth not the operation of the law, *rebus sic stantibus*. And therefore I conclude that this difference is but a device full of weakness and ignorance; and that there is one and the same reason of naturalizing subjects by descent, and subjects by conquest; and that is the union in the person of the king; and therefore that the case of Scotland is as clear as that of Ireland, and they that grant the one cannot deny the other. And so I conclude this second part, touching confutation.

To proceed therefore to the proofs of our part, your lordships cannot but know many of them must be already spent in the answer which we have made to the objections. For *corruptio unius generatio alterius* holds as well in arguments, as in nature; the destruction of an objection begets a proof. But nevertheless I will avoid all iteration, lest I should seem either to distrust your memories, or to abuse your patience; but will

hold myself only to those proofs which stand substantially of themselves, and are not intermixed with matter of confutation. I will therefore prove unto your lordships that the *post-natus* of Scotland is by the law of England natural, and ought so to be adjudged, by three courses of proof.

1. First, upon point of favour of law.
2. Secondly, upon reasons and authorities of law.
3. And lastly, upon former precedents and examples.

1. Favour of law: what mean I by that? The law is equal and favoureth not. It is true, not persons; but things or matters it doth favour. Is it not a common principle, that the law favoureth three things, life, liberty, and dower? And what is the reason of this favour? This, because our law is grounded upon the law of nature, and these three things do flow from the law of nature; preservation of life, natural; liberty, which every beast or bird seeketh and affecteth, natural; the society of man and wife, whereof dower is the reward, natural. It is well. Doth the law favour liberty so highly, as a man shall enfranchise his bondman, when he thinketh not of it, by granting to him lands or goods? and is the reason of it *quia natura omnes homines erant liberi;* and that servitude or villenage doth cross and abridge the law of nature? and doth not the self-same reason hold in the present case? For, my lords, by the law of nature all men in the world are naturalized one towards another; they were all made of one lump of earth, of one breath of God; they had the same common parents; nay, at the first they were, as the Scripture sheweth, *unius labii*, of one language, until the curse; which curse, thanks be to God, our present case is exempted from. It was civil

and national laws that brought in these words, and differences, of *civis* and *exterus*, alien and native. And therefore because they tend to abridge the law of nature, the law favoureth not them, but takes them strictly: even as our law hath an excellent rule, that customs of towns and boroughs shall be taken and construed strictly and precisely, because they do abridge and derogate from the law of the land. So by the same reason, all national laws whatsoever are to be taken strictly and hardly in any point wherein they abridge and derogate from the law of nature. Whereupon I conclude that your lordships cannot judge the law for the other side, except the case be *luce clarius;* and if it appear to you but doubtful, as I think no man in his right senses but will yield it to be at least doubtful, then ought your lordships, under your correction be it spoken, to pronounce for us because of the favour of law. Furthermore as the law of England must favour naturalization as a branch of the law of nature, so it appears manifestly, that it doth favour it accordingly. For it is[1] not much to make a subject naturalized by the law of England: it should suffice, either place or parents. If he be born in England it is no matter though his parents be Spaniards, or what you will: on the other side, if he be born of English parents, it skilleth not though he be born in Spain, or in any other place of the world. In such sort doth the law of England open her lap to receive in people to be naturalized; which indeed sheweth the wisdom and excellent composition of our law, and that it is the

[1] I have ventured on transposing the words, which in the MS. stand "is it," with a note of interrogation at "parents," and substituting colons for full stops in several clauses following.

law of a warlike and a magnanimous nation fit for empire. For look, and you shall find that such kind of estates have been ever liberal in point of naturalization: whereas merchant-like and envious estates have been otherwise.

2. For the reasons of law joined with authorities, I do first observe to your lordships, that our assertion or affirmation is simple and plain: that it sufficeth to naturalization, that there be one king, and that the party be *natus ad fidem regis*, agreeable to the definition of Littleton, which is: *Alien is he which is born out of the allegiance of our lord the king.* They of the other side speak of respects, and *quoad*, and *quatenus*, and such subtilties and distinctions. To maintain therefore our assertion, I will use three kinds of proofs.

The first is, that allegiance cannot be applied to the law or kingdom, but to the person of the king, because the allegiance of the subject is more large and spacious, and hath a greater latitude and comprehension than the law or the kingdom. And therefore it cannot be a dependency of that without the which it may of itself subsist.

The second proof which I will use is, that the natural body of the king hath an operation and influence into his body politic, as well as his body politic hath upon his body natural; and therefore, that although his body politic of king of England, and his body politic of king of Scotland, be several and distinct, yet nevertheless his natural person, which is one, hath an operation upon both, and createth a privity between them.

And the third proof is the binding text of five several statutes.

For the first of these, I shall make it manifest, that

allegiance is of a greater extent and dimension than laws or kingdom, and cannot consist by the laws merely; because it began before laws, it continueth after laws, and it is in vigour where laws are suspended and have not their force.[1] That it is more ancient than law, appeareth by that which was spoken in the beginning by way of inducement; where I did endeavour to demonstrate, that the original age of kingdoms was

[1] Mr. Hallam, after observing that "the high flying creed of prerogative mingled itself intimately with this question of naturalization, which was much argued on the monarchical principle of personal allegiance to the sovereign, as opposed to the half republican theory that lurked in the contrary proposition," goes on to cite in illustration this thesis of Bacon's, alongside of the 5th of Coke's, "demonstrative illations or conclusions," at the close of his Report, fol. 49.; viz. that "whatsoever is due by the law and constitution of man may be altered; but natural legiance or obedience of the subject cannot be altered; *ergo*, natural legiance or obedience to the sovereign is not due by the law or constitution of man." The measure of propriety is not the same for the advocate and for the judge; and there is one part of the proof which Bacon offers of the last part of his proposition, — I mean the king's supreme authority by martial law in time of war, — which would, I suppose, have been open to serious comment if judicially delivered. But surely a glance at the context is enough to show that Bacon means something very different from what seems the obvious sense of Coke's syllogism. That monarchy, and especially hereditary monarchy, took its rise, in general, in natural relations or peculiar exigencies antecedent to formal constitutions, and that therefore the relation of king and subject was before (though subject to be defined and regulated by) the fundamental laws of kingdoms is at least a plausible historical theory; that allegiance, according to English law, "continueth after laws" and "is in vigour where the power of law hath acceptation" he endeavours to prove below; but all this is for the purpose of making out that a natural subject of the king need not be a subject of the English laws, and has nothing to do with the question whether allegiance can or cannot be "altered by the law of man," or is or is not "due by the law of man" only. Bacon does elsewhere assert the very dangerous doctrine of an "inseparable prerogative," a doctrine which could be altogether got rid of only by setting aside as unconstitutional several ruled cases which seem to have passed unquestioned among the lawyers of that day (see vol. xiv. p. 252.; 7 Co. 27.; Plowd. 502.); but I am not aware that, in his authentic works, he anywhere maintains what may be called the transcendental theory of prerogative, which I suppose Mr. Hallam to have had in view.

governed by natural equity, that kings were more ancient than lawgivers, that the first submissions were simple, and upon confidence to the person of kings and that the allegiance of subjects to hereditary monarchs can no more be said to consist by laws, than the obedience of children to parents.

That allegiance continueth after laws, I will only put the case, which was remembered by two great judges in a great assembly, the one of them now with God: which was; that if a king of England should be expulsed his kingdom, and some particular subjects should follow him in flight or exile in foreign parts, and any of them there should conspire his death; upon his recovery of his kingdom, such a subject might by the law of England be proceeded with for treason committed and perpetrated at what time he had no kingdom, and in place where the law did not bind.

That allegiance is in vigour and force where the power of law hath a cessation, appeareth notably in time of wars. For *silent leges inter arma.* And yet the sovereignty and imperial power of the king is so far from being then extinguished or suspended, as contrariwise it is raised and made more absolute; for then he may proceed by his supreme authority, and martial law, without observing formalities of the laws of his kingdom. And therefore whosoever speaks of laws, and the king's power by laws, and the subject's obedience or allegiance to laws, speak but of one half of the crown. For Bracton, out of Justinian, doth truly define the crown to consist of laws and arms, power civil and martial. With the latter whereof the law doth not intermeddle: so as where it is much spoken, that the subjects of England are under one law, and the

subjects of Scotland are under another law, it is true at Edinburgh or Stirling, or again in London or York; but if Englishmen and Scotsmen meet in an army royal before Calais, I hope then they are under one law. So likewise not only in time of war, but in time of peregrination: If a king of England travel or pass through foreign territories, yet the allegiance of his subjects followeth him: as appears in that notable case which is reported in Fleta, where one of the train of king Edward I. as he passed through France from the holy land, imbezzled some silver plate at Paris, and jurisdiction was demanded of this crime by the French king's counsel at law, *ratione soli*, and demanded likewise by the officers of king Edward, *ratione personæ;* and after much solemnity, contestation, and interpleading, it was ruled and determined for king Edward, and the party tried and judged before the knight marshal of the king's house, and hanged after the English law, and execution in St. Germain's meadows. And so much for my first proof.

For my second main proof, it is drawn from the true and legal distinction of the king's several capacities; for they that maintain the contrary opinion do in effect destroy the whole force of the king's natural capacity, as if it were drowned and swallowed up by his politic. And therefore I will first prove to your lordships, that his two capacities are in no sort confounded. And secondly, that as his capacity politic worketh so upon his natural person, as it makes it differ from all other the natural persons of his subjects; so *e converso*, his natural body worketh so upon his politic, as the corporation of the crown utterly differeth from all other corporations within the realm.

For the first, I will vouch you the very words which I find in that notable case of the duchy, where the question was, whether the grants of king Edward VI. for duchy lands should be avoided in point of nonage? The case, as your lordships know well, is reported by Mr. Plowden as the general resolution of all the judges of England, and the king's learned counsel, Rouswell the solicitor only excepted; there I find these words, Comment. fol. 285. "There is in the king not a body natural alone, nor a body politic alone, but a body natural and politic together: *corpus corporatum in corpore naturali, et corpus naturale in corpore corporato.*" The like I find in the great case of the lord Barckley set down by the same reporter. Comment. fol. 234. "Though there be in the king two bodies, and that those two bodies are conjoined, yet are they by no means confounded the one by the other."

Now then to see the mutual and reciprocal intercourse, as I may term it, or influence or communication of qualities, that these bodies have the one upon the other: the body politic of the crown indueth the natural person of the king with these perfections: That the king in law shall never be said to be within age: that his blood shall never be corrupted: and that if he were attainted before, the very assumption of the crown purgeth it: that the king shall not take but by matter of record, although he take in his natural capacity, as upon a gift in tail: that his body in law shall be said to be as it were immortal; for there is no death of the king in law, but a demise, as it is termed: with many other the like privileges and differences from other natural persons too long to rehearse, the rather because the question laboureth not in that part. But

on the contrary part let us see what operations the king's natural person hath upon his crown and body politic: of which the chiefest and greatest is, that it causeth the crown to go by descent; which is a thing strange and contrary to the course of all corporations, which evermore take in succession and not by descent. For no man can shew me in all the corporations of England, of what nature soever, whether they consist of one person, or of many, or whether they be temporal or ecclesiastical,—not any one takes to him or his heirs, but all to him and his successors. And therefore here you may see what a weak course that is, to put cases of bishops and parsons, and the like, and to apply them to the crown. For the king takes to him and his heirs in the manner of a natural body, and the word *successors* is but superfluous: and where it is used, it is ever duly placed after the word *heirs*, "the king, his heirs, and successors."

Again, no man can deny but *uxor et filius sunt nomina naturæ*. A corporation can have no wife, nor a corporation can have no son: how is it then that it is treason to compass the death of the queen or of the prince? There is no part of the body politic of the crown in either of them, but it is entirely in the king. So likewise we find in the case of the lord Berkley, the question was, whether the statute of 35 Henry VIII. for that part which concerned queen Catherine Parr's jointure, were a public act or no, of which the judges ought to take notice, not being pleaded; and judged a public act.

So the like question came before your lordship, my lord Chancellor, in serjeant Heale's case: whether the statute of 11 Edward III., concerning the entailing of

the dukedom of Cornwall to the prince, were a public act or no; and ruled likewise a public act. Why no man can affirm but these be operations of law, proceeding from the dignity of the natural person of the king; for you shall never find that any other corporation whatsoever of a bishop, or master of a college, or mayor of London, worketh any thing in law upon the wife or son of the bishop or the mayor. And to conclude this point, and withal to come near to the case in question, I will shew you where the natural person of the king hath not only an operation in the case of his wife and children, but likewise in the case of his subjects, which is the very question in hand. As for example, I put this case: Can a Scotsman, who is a subject, — subject to the natural person of the king, and not to the crown of England — can a Scotsman, I say, be an enemy by the law to the subjects of England? Or must he not of necessity, if he should invade England, be a rebel and no enemy, not only as to the king, but as to the subject? Or can any letters of mart or reprisal be granted against a Scotsman that shall spoil an Englishman's goods at sea? And certainly this case doth press exceedingly near the principal case; for it proveth plainly, that the natural person of the king hath surely a communication of qualities with his body politic, as it makes the subjects of either kingdom stand in another degree of privity one towards the other, than they did before. And so much for the second proof.

For the five acts of parliament which I spoke of, which are concluding to this question: The first of them is that concerning the banishment of Hugh Spencer in the time of king Edward II. in which act there

is contained the charge and accusation whereupon his exile proceeded, one article of which charge is set down in these words: "Homage and oath of the subject is more by reason of the crown than by reason of the person of the king: So that if the king doth not guide himself by reason in right of the crown, his lieges are bound by their oath to the crown to remove the king." By which act doth plainly appear the perilous consequence of this distinction concerning the person of the king and the crown. And yet I do acknowledge justly and ingenuously a great difference between that assertion and this, which is now maintained: for it is one thing to make things distinct, another thing to make them separable, *aliud est distinctio aliud separatio;* and therefore I assure myself, that those that now use and urge that distinction, do as firmly hold, that the subjection to the king's person and the crown are inseparable, though distinct, as I do. And it is true that the poison of the opinion and assertion of Spencer is like the poison of a scorpion, more in the tail than in the body: for it is the inference that they make, which is, that the king may be deposed or removed, that is the treason and disloyalty of that opinion. But by your leave, the body is never a whit the more wholesome meat for having such a tail belonging to it; therefore we see it is *locus lubricus*, an opinion from which a man may easily slide into an absurdity. But upon this act of parliament I will only note one circumstance more, and so leave it, which may add authority unto it in the opinion of the wisest; and that is, that these Spencers were not ancient nobles or great patriots that were charged and prosecuted by upstarts and favourites: for then it might be said, that it was

but the action of some flatterers, who use to extol the power of monarchs to be infinite: but it was contrary; a prosecution of those persons being favourites by the nobility; so as the nobility themselves, which seldom do subscribe to the opinion of an infinite power of monarchs, yet even they could not endure, but their blood did rise to hear that opinion, that subjection is owing to the crown rather than to the person of the king.

The second act of parliament which determined this case, is the act of recognition in the first year of his Majesty, wherein you shall find that, in two several places, the one in the preamble, the other in the body of the act, the parliament doth recognise that these two realms of England and Scotland are under one imperial crown. The parliament doth not say under one monarchy or king, which might refer to the person, but under one imperial crown, which cannot be applied but to the sovereign power of regiment comprehending both kingdoms. And the third act of parliament is the act made in the fourth year of his Majesty's reign, for the abolition of hostile laws: wherein your lordships shall find likewise in two places, that the parliament doth acknowledge, that there is an union of these two kingdoms already begun in his Majesty's person: so as, by the declaration of that act, they have not only one king, but there is an union in inception in the kingdoms themselves.

These two are judgments in parliament by way of declaration of law, against which no man can speak. And certainly these are righteous and true judgments to be relied upon; not only for the authority of them, but for the verity of them. For to any that shall well

and deeply weigh the effects of law upon this conjunction, it cannot but appear, that although *partes integrales* of the kingdom, as the philosophers speak, such as the laws, the officers, the parliaments, are not yet commixed; yet nevertheless there is but one and the self-same fountain of sovereign power, depending upon the ancient submission whereof I spake in the beginning; and in that sense the crowns and the kingdoms are truly said to be united.

And the force of this truth is such, that a grave and learned gentleman, that defended the contrary opinion, did confess thus far: That in ancient times, when monarchies, as he said, were but heaps of people without any exact form of policy; that then naturalization and communication of privileges did follow the person of the monarch; but otherwise since states were reduced to a more exact form. So as thus far we did consent; but still I differ from him in this, that these more exact forms, wrought by time, and custom, and laws, are nevertheless still upon the first foundation, and do serve only to perfect and corroborate the force and bond of the first submission, and in no sort to disannul or destroy it.

And therefore with these two acts do I likewise couple the act of 14 Edward III. which hath been alleged of the other side. For by collating of that act with these former two, the truth of that we affirm will the more evidently appear, according unto the rule of reason: *opposita juxta se posita magis elucescunt.* That act of 14 is an act of separation: these two acts formerly recited are acts tending to union. That[1] act is an act that maketh a new law; for it is by words of

[1] This in MS.

"grant and establish:" these two acts declare the common law as it is, being by words of recognition and confession.

And therefore upon the difference of these laws you may substantially ground this position: That the common law of England, upon the adjunction of any kingdom unto the king of England, doth make some degree of union in the crowns and kingdoms themselves; except by a special act of parliament they be dissevered.

Lastly, the fifth act of parliament which I promised, is the act made in 42 E. III. cap. 10. which is an express decision of the point in question. The words are, "Item, (upon the petition put into parliament by the "commons that infants born beyond the seas in the "seigniories of Calais, and elsewhere within the lands "and seigniories that pertain to our sovereign lord the "king beyond the seas, be as able and inheritable of "their heritage in England, as other infants born within "the realm of England,) it is accorded that the com-"mon law and the statute formerly made be holden."

Upon this act I infer thus much. First, that such as the petition mentioneth were naturalized, the practice shews: then if so, it must be either by common law or statute, for so the words purport: not by statute, for there is no other statute but 25 E. III. and that extends to the case of birth out of the king's obedience, where the parents are English; *ergo* it was by the common law, for that only remains. And so, by the declaration of this statute, at the common law "all "infants, born within the lands and seigniories (for I "give you the very words again) that pertain to our "sovereign lord the king, (it is not said, as are the "dominions of England) are as able and inheritable

"of their heritage in England, as other infants born "within the realm of England." What can be more plain? And so I leave statutes and go to precedents; for though the one do bind more, yet the other sometimes doth satisfy more.

For precedents; in the producing and using of that kind of proof, of all others, it behoveth them to be faithfully vouched; for the suppressing or keeping back of a circumstance may change the case: and therefore I am determined to urge only such precedents, as are without all colour or scruple of exception or objection, even of those objections which I have, to my thinking, fully answered and confuted.

This is now, by the providence of God, the fourth time that the line and kings of England have had dominions and seigniories united unto them as patrimonies, and by descent of blood; four unions, I say, there have been *inclusivè* with this last. The first was of Normandy, in the person of William, commonly called the Conqueror. The second was of Gascoigne, and Guienne, and Anjou, in the person of king Henry II.; in his person, I say, though by several titles. The third was of the crown of France, in the person of king Edward III. And the fourth of the kingdom of Scotland, in his Majesty. Of these I will set aside such as by any cavillation can be excepted unto.

First, I will set aside Normandy, because it will be said, that the difference, of country accruing by conquest from countries annexed by descent, in matter of communication of privileges, holdeth both ways, as well of the part of the conquering kingdom, as the conquered; and therefore that although Normandy was no conquest of England, yet England was a conquest

of Normandy; and so a communication of privileges between them. Again, set aside France, for that it will be said that although the king had a title in blood and by descent, yet that title was executed and recovered by arms; so as it is a mixt title of conquest and descent, and therefore the precedent not so clear.

There remains then Gascoigne and Anjou, and that precedent likewise I will reduce and abridge to a time, to avoid all question. For it will be said of them also, that, after, they were lost, and recovered *in ore gladii*;[1] that the ancient title of blood was extinct; and that the king was in upon his new title by conquest: and Mr. Walter hath found a book-case in 13 H. VI. abridged by Mr. Fitz-Herbert, in title of *Protection placito* 56., where a protection was cast, *quia profecturus in Gasgoniam* with the earl of Huntingdon, and challenged because it was not a voyage *royal;* and the justices thereupon required the sight of the commission, which was brought before them, and purported power to pardon felonies and treason, power to coin money, and power to conquer them that resist: whereby Mr. Walter, finding the word *conquest*, collected that the king's title at that time was reputed to be by *conquest*. Wherein I may not omit to give *obiter* that answer which law and truth provide, namely, that when any king obtaineth by war a country whereunto he hath right by birth, that he is ever in upon his ancient right, and not upon his purchase by conquest; and the reason is, that there is as well a judgment and recovery by war and arms, as by law and course of justice. For war is a tribunal-seat, wherein God giveth the judgment, and the trial is by battle, or duel, as in the case of trial of

[1] So in MS.: but I suppose it should be *jure gladii*.

private right: and then it follows, that whosoever cometh in by eviction, comes in his *remitter;* so as there will be no difference in countries whereof the right cometh by descent, whether the possession be obtained peaceably or by war. But yet nevertheless, because I will utterly take away all manner of evasion and subterfuge, I will yet set apart that part of time, in and during the which the subjects of Gascoigne and Guienne might be thought to be subdued by a re-conquest. And therefore I will not meddle with the prior of Shells' case, though it be an excellent case, because it was in time 27 E. III.; neither will I meddle with any cases, records, or precedents, in the time of king H. V. or king H. VI. for the same reason; but will hold myself to a portion of time from the first uniting of these provinces in the time of king H. II. until the time of king John, at what time those provinces were lost; and from that time again unto the seventeenth year of the reign of king E. II. at what time the statute of *prærogativa Regis* was made, which altered the law in the point in hand.

That in both these times the subjects of Gascoigne, and Guienne, and Anjou, were naturalized for inheritance in England, by the laws of England, I shall manifestly prove; and the proof proceeds, as to the former time, (which is our case,) in a very high degree *a minore ad majus*, and as we say, *a multo fortiori.* For if this privilege of naturalization remained unto them when the countries were lost, and became subjects in possession to another king, much more did they enjoy it as long as they continued under the king's subjection.

Therefore to open the state of this point. After these provinces were, through the perturbations of the

state in the unfortunate time of king John, lost and severed, the principal persons which did adhere unto the French were attainted of treason, and their escheats here in England taken and seized. But the people, that could not resist the tempest when their heads and leaders were revolted, continued inheritable to their possessions in England; and reciprocally the people of England inherited and succeeded to their possessions in Gascoigne, and were both accounted *ad fidem utriusque regis*, until the statute of *prærogativa Regis*. Wherein the wisdom and justice of the law of England is highly to be commended. For of this law there are two grounds of reason, the one of equity, the other of policy. That of equity was, because the common people were in no fault, but as the Scripture saith in a like case, *quid fecerunt oves istæ?* It was the cowardice and disloyalty of their governors that deserved punishment, but *what have these sheep done?* And therefore to have punished them, and deprived them of their lands and fortunes, had been unjust. That of policy was, because if the law had forthwith, upon the loss of the countries by an accident of time, pronounced the people for aliens, it had been a kind of cession of their right and a disclaimer in them, and so a greater difficulty to recover them. And therefore we see the statute which altered the law in this point was made in the time of a weak king, that, as it seemed, despaired ever to recover his right; and therefore thought better to have a little present profit by escheats, than the continuance of his claim, and the countenance of his right, by the admitting of them to enjoy their inheritances as they did before.

The state therefore of this point being thus opened,

it resteth to prove our assertion, that they were naturalized: for the clearing whereof I shall need but to read the authorities, they be so direct and pregnant.

The first is the very text of the statute of *prærogativa Regis*. *Rex habebit escætas de terris Normannorum cujuscunque feodi fuerint, salvo servitio, quod pertinet ad capitales dominos feodi illius: et hoc similiter intelligendum est, si aliqua hæreditas descendat alicui nato in partibus transmarinis, et cujus antecessores fuerunt ad fidem regis Franciæ, ut tempore regis Johannis, et non ad fidem regis Angliæ, sicut contingit de baronia Monumetæ*, &c.

By which statute it appears plainly, that before the time of King John there was no colour of any escheat, because they were the king's subjects in possession, as Scotland now is; but only it determines the law from that time forward.

This statute if it had in it any obscurity, it is taken away by two lights, the one placed before it, and the other placed after it; both authors of great credit, the one for ancient, the other for late times: the former is Bracton, in his cap. *De exceptionibus* 24, *lib.* 5. *fol.* 427. and his words are these: *Est etiam et alia exceptio quæ tenenti competit ex persona petentis, propter defectum nationis, quæ dilatoria est, et non perimit actionem; ut si quis alienigena qui fuerit ad fidem regis Franciæ, et actionem instituat versus aliquem, qui fuerit ad fidem regis Angliæ, tali non respondeatur, saltem donec terræ fuerint communes.*

By these words it appeareth, that after the loss of the provinces beyond the seas, the naturalization of the subjects of those provinces was in no sort extinguished, but only was in suspense during the time of war and

no longer; for he saith plainly that the exception, (which we call plea to the person) of *alien*, was not peremptory, but only dilatory; that is to say, during the time of war, and until there were peace concluded, which he terms by these words, *donec terræ fuerint communes:* which, though the phrase seem somewhat obscure, is expounded by Bracton himself in his fourth book, fol. 297.[1] to be of peace made and concluded. Whereby the inhabitants of England and those provinces mought enjoy the profits and fruits of their lands in either place *communiter*, that is, respectively, or as well the one as the other: so as it is clear they were no aliens in right, but only interrupted and debarred of suits in the king's courts in time of war.

The authority after the statute is that of Mr. Stamford, the best expositor of a statute that hath been in our law, a man of reverend judgment and excellent order in his writings. His words are in his exposition upon the branch of the statute which we read before: "By this branch it should appear, that at this time men of Normandy, Gascoigne, Guienne, Anjou, and Britain, were inheritable within this realm, as well as Englishmen, because that they were sometimes subjects to the kings of England, and under their dominion, until king John's time, as is aforesaid: and yet after his time, those men, saving such whose lands were taken away for treason, were still inheritable within this realm till the making of this statute; and in the time of peace between the two kings of England and France they were answerable within this realm, if they had brought any action for their lands and tenements."

[1] Apparently a wrong reference in the MS. In fol. 298. the phrase occurs, but without further explanation.

So as by these three authorities, every one so plainly pursuing the other, we conclude that the subjects of Gascoigne, Guienne, Anjou, and the rest, from their first union by descent until the making of the statute of *prærogativa Regis*, were inheritable in England, and to be answered in the king's courts in all actions, except it were in time of war. Nay more, which is *de abundante*, that when the provinces were lost and disannexed, and that the king was but king *de jure* over them, and not *de facto;* yet nevertheless the privilege of naturalization continued.

There resteth yet one objection, rather plausible to a popular understanding than any ways forcible in law or learning: which is a difference taken between the kingdom of Scotland and these duchies, for that the one is a kingdom, and the other was not so; and therefore that those provinces being of an inferior nature did acknowledge our laws and seals and Parliament, which the kingdom of Scotland doth not.

This difference was well given over by Mr. Walter; for it is plain that a kingdom and absolute dukedom, or any other sovereign estate, do differ *honore*, and not *potestate:* for divers duchies and counties that are now, were sometimes kingdoms, and divers kingdoms that are now, were sometimes duchies, or of other inferior style: wherein we need not travel abroad, since we have in our own state so notorious an instance of the country of Ireland, whereof king H. VIII. of late time was the first that writ himself king, the former style being lord of Ireland, and no more; and yet kings had the same authority before, that they have had since, and the nation the same marks of a sovereign state, as their Parliaments, their arms, their coins, as they

now have: so as this is too superficial an allegation to labour upon.

And if any do conceive that Gascoigne and Guienne were governed by the laws of England: first that cannot be in reason. For it is a true ground, that wheresoever any prince's title unto any country is by law, he can never change the laws, for that they create his title; and therefore, no doubt those duchies retained their own laws; which if they did, then they could not be subject to the laws of England. And next, again, the fact or practice was otherwise, as appeareth by all consent of story and record; for those duchies continued governed by the civil law, their trials by witnesses and not by jury, their lands testamentary, and the like.

Now for the colours that some have endeavoured to give, that they should have been subordinate to the government of England; they are partly weak, and partly such as make strongly against them. For as to that, that writs of *Habeas Corpus* under the great seal of England have gone to Gascoigne, it is no manner of proof; for that the king's writs, which are mandatory and not writs of ordinary justice, may go to his subjects into any foreign parts whatsoever, and under what seal it pleaseth him to use. And as to that, that some acts of Parliament have been cited, wherein the Parliament of England have taken upon them to order matters of Gascoigne; if those statutes be well looked into, nothing doth more plainly convince the contrary; for they intermeddle with nothing but that that concerneth either the English subject personally, or the territories of England locally, and never the subjects of Gascoigne or the territories of

Gascoigne. For look upon the statute of 27 E. III. cap. 5. there it is said, that there shall be no forestalling of wines. But by whom? Only by English merchants; not a word of the subjects of Gascoigne, and yet no doubt they might be offenders in the same kind. So in the sixth chapter it is said, that all merchants Gascoignes may safely bring wines into what part it shall please them; here now are the persons of Gascoignes; but then the place whither? Into the realm of England. And in the seventh chapter, that erects the ports of Bordeaux and Bayonne for the staple towns of wine; the statute ordains, "that if any," but who? "English merchant, or his servants, shall buy or bargain other where, his body shall be arrested by the steward of Gascoigne, or the constable of Bordeaux:" true, for the officers of England could not catch him in Gascoigne; but what shall become of him, shall he be proceeded with within Gascoigne? No, but he shall be sent over into England to the Tower of London.

And this doth notably disclose the reason of that custom which some have sought to wrest the other way: that custom, I say, whereof a form doth yet remain, that in every Parliament the king doth appoint certain committees in the upper house to receive the petitions of Normandy, Guienne, and the rest; which, as by the former statute doth appear, could not be for the ordering of the governments there, but for the liberties and good usage of the subjects of those parts when they came hither, or *vice versa*, for the restraining of the abuses and misdemeanors of our subjects when they went thither.

Wherefore I am now at an end. For as to speak

of the mischiefs, I hold it not fit for this place; lest we should seem to bend the laws to policy, and not to take them in their true and natural sense. It is enough that every man knows, that it is true of these two kingdoms, which a good father said of the churches of Christ: *si inseparabiles insuperabiles.* Some things I may have forgot; and some things, perhaps, I may forget willingly; for I will not press any opinion or declaration of late time which may prejudice the liberty of this debate; but *ex dictis, et ex non dictis*, upon the whole matter, I pray judgment for the plaintiff.

THE

ARGUMENT ON THE WRIT

DE

NON PRECEDENDO REGE INCONSULTO.

PREFACE.

I HAVE already explained why this argument is reprinted from the *Collectanea Juridica*, and not from the Stowe MS. I have only made obvious verbal and typographical corrections, and have generally noted the former.

The case is reported by Moore, p. 842.; by Bulstrode, vol. iii. p. 32.; and by Rolle, vol. i. pp. 188. 206. and 288. It commenced in Easter Term, 1615. This last speech of Bacon's was delivered January 25th, 1615–6: the former editor, though giving references to all the reports, seems not to have looked at Rolle, who at p. 288. gives a full summary of it, and has been misled by Bulstrode into imagining that it was prepared, but never spoken. Bacon himself, on the contrary, says it had "a mixture of the sudden." He adds, that it took two hours and a half in the delivery, and "lost not one auditor that was present at the beginning," and that Coke pronounced it to be "a famous argument."[1]

The case was this: —

In or before September, 1611,[2] John Murray, Groom

[1] See his letter to the King, January 27th, 1615–6.

[2] It is difficult and not material to make out the exact facts and dates. It is said that two Patents were recited in the Writ *de non procedendo*; the date

of the Bedchamber, procured the appointment of the defendant Michell[1] to a newly created Patent Office, "for the sole making of writs of *Supersedeas quia improvidè emanavit*, in the Common Pleas." The plaintiff Brownlow, who had held the office of Prothonotary from the time of Elizabeth,[2] brought an assize to be restored to the possession of the ancient fees attached to this duty, and so raised the question whether the patent was lawful. The cause of the delay till 1613 is not explained.

Bacon disclaims having had any hand in passing this patent.[3] Murray was influential at Court; his name occurs not unfrequently in the S. P. O. Calendar, as the recipient of grants of various kinds in his own name; and Bacon speaks of him as directly interested in this case. It seems probable, therefore, that the grant was made merely *improvidè*, as matter of favour, and without any deliberate design either of altering the constitution of the offices of the Common Law Courts, or of providing for the necessities of the Crown, after the French fashion, by the creation and sale of new offices.

But it appears that in this, as in the contemporary business of monopolies, James was running into difficulties before which Elizabeth had already found it expedient to give way. She too had attempted to erect

of the first being January 9th, 7 Jac. i. e. 1609-10. Sept. 19th, 1611, is the date of a Docket in the State Paper Office, directing Sir William Killigrew or his deputy, "to be acquainted with the Patent made to John Michell, at the suit of John Murray, &c." One Cox or Cop was a co-defendant, and I suppose the two Patents may somehow have reference to the two names.

[1] Sir John in the Reports, Esquire in the S. P. O.

[2] Burke's Extinct Baronetages, the only authority which I could light upon after some search.

[3] *Infrà*. p. 276.

the same office, and the Judges of the day had refused obedience to letters and privy seals ordering them to receive the patentee into his office. The final settlement of the dispute looks like a device of her own, for extricating herself with as much dignity and as little loss of power as might be. A fresh command was sent that the Judges should receive Cavendish, the patentee, or appear before the Chancellor and the Master of the Rolls to state the reason of their refusal. They did so, citing Magna Charta — that no man shall be disseised of his freehold, — "and the queen was satisfied."[1]

Whether this case was known to Bacon before the argument in Trin. Term, when it was alleged on the other side, does not appear.[2] But the course which he took from the first, not only made it impossible for him to recede without some disgrace to the King, but brought in question the limits of a much more important claim of the prerogative than that of re-modelling the offices of the Common Law Courts without the assent of Parliament, whether with or without consideration of vested rights. When asking time to plead, he described the original question in the cause as affecting one of the "four columns of the prerogative," — viz. that concerning matters judicial, — "which

[1] Rolle, p. 206., gives the fullest account of this case, but all the other Reporters mention it. If Brownlow had come into office after Michell, the particular ground on which the Judges rested their refusal would not have applied in Michell's case, though it would still have been rash to renew the dispute.

[2] While these pages were passing through the press, I found in Harl. MSS. 1756. (a volume containing some of Bacon's works), p. 548., a report of Cavendish's case, which may very well be Anderson's, which was mentioned in the Court. It seems there was no formal decision: but the Chancellor and Master of the Rolls reported "their good allowance" of the Judge's reasons, which the Reporter "heard her Majesty did well accept," and nothing more was heard of the matter.

he should ever maintain according to his place:" and when the time for pleading came he and the solicitor-general appeared with a formal message from the King and presented the writ *de non procedendo*. He endeavoured to stop any argument on the writ, insisting it was peremptory and not to be questioned: this was overruled, and the matter was argued on the other side, and for the Crown by the solicitor-general, in Trin. Term; and finally Bacon was heard in Hil. Term, Jan. 25th. The reporters say both sides were very confident of success: Bacon thought he had produced a great effect; but nevertheless, "because the times were as they were," recommended the King, who had interfered once or twice with the cause before, to reiterate his command that the Chief Justice, having heard the attorney-general, should forbear further proceeding till he had communicated with his Majesty. It will be seen that in his argument he treats the writ as concerning rather the dignity than the substantial power of the Crown: — Mr. Brownlow would have his cause heard on the Common Law side of Chancery, instead of in the King's Bench, and no doubt would have justice done to him. But in his letter to the King he explains that the chief importance of the proceedings was in bringing any case that might concern the King, in profit or in power, from the ordinary benches to the Chancellor, who (as the King knew) "is ever a principal counsellor and instrument of monarchy, of immediate dependence on the king."

The Judges did not dispute, nor could they, that there were abundant precedents of this writ. The only question, had they proceeded to judgment, would have been whether they could see their way to have

fixed some reasonable and constitutional bounds, definable by law, within which it was to be allowed. Bacon, it will be observed, had at first contended that the writ was to be obeyed without any opportunity of discussion: in other words that the mandatory part alone was to be looked at. When beaten from this, he here argues that it was only necessary that it should assert that the King had a right, and should show that, if it existed, the case touched it; the Chancellor being thereupon made the judge whether such a right should be recognised — thus making him in fact the sole and unchecked expositor of the constitution in all such points as could in any way affect private rights.

No decision was given. The case was compromised, at whose instigation we are not informed; but the substance of the arrangement is mentioned by the reporters, and is most authentically expressed in the Warrant Book, in the S. P. O.[1]

It recites the purport of the patent to Michell for making the writs of *Supersedeas*, "the making whereof the Prothonotaries and Exigenters pretended to belong to them only, and commenced a suit in the K. B. which yet dependeth undecided;" and states "that they nevertheless by humble petition make a free and voluntary offer to cease their suit, and consent that the said office shall be established and enjoyed by the said patentee; humbly beseeching We would be pleased to make some declaration of our royal determination, under our privy seal, to our Judges, that we will not

[1] Undated, and referred in the Calendar to Sept. 1611; I presume because of its obvious connection with the Docket of that date already cited. I do not understand how the documents came to be transcribed into this Warrant Book in the confused order in which they stand.

admit any such suits hereafter that may tend to the granting away, abatement, or diminution of any of the profits, or preeminences which the Judges, officers, or clerks of the said Court do now hold and enjoy (other than the said place and office aforesaid). Which their petition we cannot but, according to our princely inclination, take in good part, as proceeding from men that do well discern what befits them to do, and what they may expect upon an offer so full of duty and good manners." And the King proceeds to make the declaration accordingly.[1]

So that, in the end, Murray and his friend kept their profits; the King forbad himself, under penalty of breaking his recorded faith, the exercise of his alleged prerogative of ordering the course of the Common Pleas offices; and his claim to issue his writ *de non procedendo Rege inconsulto*, unquestionable in the Courts of Law, remained where it had been, or was made less tenable for the future by not being in this case acknowledged.

[1] The note of a grant to Michell of the office of keeping the seal and signing of writs in the Common Pleas, during pleasure, dated April 19th, 1616, appears in the Grant Book; which I suppose to mean the same office as before, regranted.

THE ARGUMENT

OF

SIR FRANCIS BACON, KNIGHT,

ATTORNEY-GENERAL IN THE KING'S BENCH,

IN THE CASE DE REGE INCONSULTO,

BETWEEN BROWNLOW AND MICHELL.

THIS case hath been well handled on the other side, if that may be said to be handled which, in the chief points, is scarcely touched: neither do I impute that to Mr. Croke, that argued; who I know is learned, and hath taken a great deal of pains; but *ex nihilo nihil fit;* the fault was in the stuff, not in the workman; yet this I must say, that it is a strange form of proof to put a number of cases where this writ hath been obeyed, which is directly against you; and then to feign to yourself what was the reason why it was obeyed, and to go on and imagine that if it had been thus and thus it would not have been obeyed. Sir, the story is good; but your poetry why it was done, and what should have been done if the case had differed, — therein you do but please yourself; it will never move the Court at all.

Now I shall answer you so fully, as neither reason nor authority, which you have made and alledged, shall

pass. But first I will confirm the truth of that I hold; and incidentally in the proper place confute and encounter every objection that hath been or can be made; for, *rectum est judex sui et obliqui.*

The writ of *non procedendo rege inconsulto.*

My lords, this writ *de non procedendo ad assisam, rege inconsulto*, is in its nature a mere-stone of the king's inheritance, and as a hedge about his vineyard; and therefore it is good to take the oracle of the wise man against alterations, *qui volvit lapidem revertet super eum; et qui tollit sepem eum mordebit serpens;* he that removes a stone, it will turn upon him and crush him; and he that takes away an hedge, a serpent bred in that hedge shall bite him. But I little doubt by the help of this Court, that this stone shall remain in the ancient term and bound, and that the hedge and fence shall continue in full repair.

The antiquity and worth of the writ.

But as the Court said at the first truly, that this writ is not new, so I say again that the disallowance of this writ should be new; for I will maintain this universal negative, that since the law was law, this writ was never disallowed, but in the excepted case of an act of parliament. Evermore it hath closed, not the judges mouths, but that sometimes they have spoken in it, but ever their hands, that they never proceeded till they had leave; therefore if that should be done which was never done, it must be either in

The King's Counsel, the Court, or, the matter itself.

For the King's Counsel, we are the king's poor servants; but yet we shall be able so to carry the king's business, as it shall not die in our hands.

For the Court, it is our strength; they are sworn to the King's rights and regalities, and if we should fail

they (*ex officio*) ought to supply; much more will they aid us, we failing not. The judges of the land, as they are the principal instruments of obedience towards the king in others, so have they ever been principal examples of obedience to the king in themselves. The twelve judges may be compared to the twelve lions supporting Solomon's throne; in that kind is their stoutness to be shown, as it hath been now of late in a great business to their great honour; and therefore in the Court I am sure the let will not be.

It rests then only that it must be in the matter; and this now shall be my labour to make plain, that in the matter it cannot be; wherein, my lord and the rest, if I have thought no pains too much, I beseech you think no time too long.

The proofs that I will deduce shall be from four causes of this writ, for they of all other places of argument are the strongest, like to a fortification from an higher ground: for all other places, *ab effectis*, *ab adjunctis*, *a simili*, *&c.* they are but from flats and even grounds; but the argument from the causes are *à prænotioribus*, as from the chiefest commanding ground. Four causes.

I will therefore open unto you, first, the end of this writ, the efficient of it, the matter of it, and the form of it; and out of all these I will prove most clearly the present case. Which parts before I deduce, I will give you at the first entrance a form or abstract of them all four, that, forethinking what you shall hear, the proof may strike upon your minds as prepared.

The end of this matter is no other than the justest thing in the world, to prevent and provide that the king's rights be not questioned or prejudged 1. The end.

in suits between common persons, the king not being made party, but that the impleading and discussing of the same be in the proper suit, court, or course.

2. The efficient. The efficient of this writ is that same *primogenita pars legis* which we call the king's prerogative: and, namely, that branch of it which is the king's prerogative in suits; for the common law of England (which is an old servant of the Crown) as it entertaineth his Majesty well and nobly wheresoever it meeteth him, in the very region and element of law, which is his judicial courts and suits, it welcometh him with a number of worthy prerogatives agreeable to monarchy, and yet agreeable to justice.

3. The matter. The matter of this writ is always loss and damage to the king, or possibility of loss and damage; wherein the law is provident, that it doth not so look to the present loss of the king, as it forgetteth future; nor so look to direct loss, as it forgetteth losses collateral, or by consequence; but is (as I said at first), by means of this writ, as a firm and perfect hedge or wall round about every side of the king's inheritances and rights; and therefore I say, as I have often said, that Hampton-court, or Windsor-castle, is not so valuable to the king as this writ.

The writ hath two parts, the certificate or recital of the king's title called in question, and the precept or mandative part; both which I will maintain to be sufficient, and warranted by law: but this part, concerning the form of the writ, induceth question of matter precedent and matter subsequent. The matter precedent is the king's title; the matter subsequent is the court's obedience; of both which also it is necessary to speak: upon which parts, when you have heard me, I

hope to leave the court without all scruple, and fully fortified, not only in the matter, but in myself, that I speak not officiously in this case, or as a man that would make any thing good, but with science and conscience, and according to that I read and find.

For the first part, therefore, which is the 1st. The end. final cause for which this writ by law is devised and ordained, I will set forth unto you four things:

First, I will clear an error, or remove a mistaking, for that I will shew you that this writ is not a delay of justice, as it hath been conceived, but a direction of justice, turning of justice into the right way.

Second, Then I will lay down my ground, which is sound and infallible, that the king's title shall never be discussed in a plea between common persons, the king not made party.

Thirdly, I will shew you in what court, and in what manner, the king is to be made party.

Lastly, I will make it plain, that in this present case, in the assise between Brownlow and Michell, a right of the king, both in profit and power, and that valuable, and that of a very high nature, is to come in question to be discussed.

So then, the full of this argument will be, whereso-ever the king's right is to be questioned, in a plea between party and party, there, after the writ of *rege inconsulto* purchased, the court ought not to proceed: but in this assise between Brownlow and Michell the king's right falls out to be questioned; *ergo*, in this assise the court ought not to proceed.

This is a course plain and perspicuous, my lord; it is a wise saying, *sapiens incipit a fine;* so the mistaking (whether voluntary or ignorant, but gross and idle

I am sure) of the end and use of this writ hath bred a great buzz, and a kind of amazement, as if this were a work of absolute power, or a strain of the prerogative, or a checking or shocking of justice, or an infinite delay; as if Mr. Brownlow must[1] sit down and expect the good hour, and had no means to help himself; or as if all causes might thus be charmed asleep, and the wheel of justice arrested at pleasure; or that the statute of 2 E. 3. c. 8. *that justice should not stay for great seal nor little seal*, should suffer violence; and such other popular and idle blasts.

Now all this mist is soon scattered, when the state of the question is known, and truly expounded, which is no more but this, Whether the king's right to create and constitute a proper office for the making of *supersedeas quia improvidè*, and appointing a reasonable fee to the same, and the king's property and royalty in the gift of the said office in perpetuity, shall be tried between Brownlow and Michell in the king's bench, or between Brownlow and the king in chancery?

[Whether the king may create an office.]

So here is all this great matter, *mutatio fori et partis;* and therefore this writ is no dilatory or stay of suit, but the removing of a suit, whereby justice moves on still in a straight line; it giveth the party a better suit in disabling the present suit.

That this is so, you shall find it notably proved in *Arden* and *Darcy's* case, 38 Eliz. rot. 1128. which was the latest case of this writ. There when the counsel of Arden alledged that this writ was a delay of justice, and that it was against the statute of 2 E. 3. that the judge should not stay for great seal nor petty seal, and

[1] "not" follows in the print.

chanted upon this ground; my lord Anderson and the rest of the court stopped that allegation, and said, just as I say now, that to obey this writ is not to delay justice to the subject, but to do justice to the king, and to draw justice to the right way; even as, should I stay and stop the water of the Thames or of a river from going into a by-let or creek, to make it run the better in the right channel, this were no stopping the stream, but guiding it; and I tell you plainly it is little better than a by-let or crooked creek, to try whether the king hath power to erect this office, in an assise between Brownlow and Michell.

This writ is not to gain the king time, but to alter the course.

So then let it be understood, that this writ is not to gain the king a little time to provide how to make his defence, and so to go on in this court, but plainly an alteration of the suit and of the court. As Mr. Solicitor said prettily, the king saith now to the plaintiff, *in me convertite ferrum, nihil iste, nec ausus, nec potuit;* Mr. Michell is now no more your adversary, but you must plead with the King. Marry, I differ from Mr. Solicitor in that other point, that he thought the writ had been naught, if it had not the clause *donec aliud habueritis in mandatis;* for indeed I chose[1] that form as the fairest and most corrected; but I can shew many precedents without it; for it is ever understood, though it be not expressed: for if the suit do fall out against the king in the chancery, then indeed you shall have *aliud mandatum*, that is a *procedendo;* but if it fall out for the king in the chancery, then your *donec* is like the *donec* of the Scripture, *donec solvit ultimum dodrantem*, that is, never; for you shall never have *aliud mandatum*, but you shall have *itera-*

[1] "chuse" as printed.

tum mandatum of a *supersedeas omnino*. But all this grows upon the same error, that men speak as if this writ were a mere dilatory, for then indeed Mr. Solicitor says well, delays may not be infinite; but this is no dilatory but a directory, I say a direction and reduction of justice from obliquity and circuity into a direct path; that is, to try the king's right in a plea with the king. So much for the discharge of the erroneous conceit of this writ.

Now I come to the second point of my first part, which is, that where the king's right is questioned, he must be made party: for this, *res ipsa loquitur vel potiùs clamat*, the king shall not be surprised, nor stricken upon his back, nor made *accessorium quiddam* to the suit of another. If Mr. Michell pretend to have right to the possession of the office of the *supersedeas* and fee for the present by the king's grant, and the king pretends to the gift of it afterwards, the king shall not depend upon Mr. Michell's suit, but Mr. Michell upon the king's suit; and although Mr. Michell's right be present, and the king's to come, yet posteriority in the king's case is always preferred: the rule ever holds between the king and the subject, *that which is last shall be first, and that is first shall be last.* For the books, they do so receive this maxim, and lay it for a law fundamental, and ground infallible, as I will not authorize principles. The best books are 39 E. 3. fol. 12., 31 E. 3. Fitz: *aide de roy, pl.* 69. 7 H. 4, fo. 18. &c. These books have it, *disertis verbis*, and *in terminis terminantibus*, that the king's right shall not be tried, except he be made party; and the judges make a wonder of it, when they are pressed, *What would you*

The king must be made party, where his right cometh in question.

The king's right is ever the principal, though it be last in time.

have us do by the king's right without making him party? But the cases that are not so vulgar, and yet do excellently express this learning, those I think worthy the putting.

As, first, 12. *Assise, pl.* 41., the tenant in a *præcipe* conveyed the land to the king hanging the writ, and thereupon prayed aid of the king; and the court granted it; and two several judgments (saith Brooke[1]) were vouched for it. This is somewhat a strange case, and the hardest case that can be devised or put, of making the king party.

Aid shall be where the land is conveyed hanging the suit.

For, first, the relation of the writ avoids all mean conveyances, *by maxim.*

Again, the act of the tenant ought not[2] to prejudice the demandant, as touching the tenancy, *by maxim;* and yet, nevertheless, this other maxim which we have now in hand, *that the king's right shall not be tried, except he be made party*, is stronger than the other two, and in law mates them: but Brooke, like a grave judge, in abridging the case saith, that the king is not in justice tied to give him aid, except he please; which I conceive to be in regard of the mischief of maintenance.

The other case is an excellent case, and gives light by contraries; and that is the case of 15 *H.* 7. *fo.* 10. where the king granted a wardship to *J. S.* and there was a traverse put into the office, by one that pretended right; and a *scire facias* went out against the patentee, that had the grant of the ward-

[Fits. aid de Roy, pl. 98.]

[1] Printed "Choke." See Brooke *Aid del Roy*, pl. 71., whence I take the reference, which is wrongly given as 12 Ass. pl. 49. I have not generally verified the references, except by the aid of Brooke and Fitzherbert: and I fear there are many errors.

[2] I have inserted this negative.

ship of the land, who came in and pleaded his estate by letters patents, and prayed in aid of the king. Saith the court, "Clearly you shall have no aid; you are at "no mischief, for the king is party already, and you "may *consult* with him." So you see plainly, that where the original suit is in the chancery, whereby the king is party already, there the law hath its effect without circuity; and therefore, *à contrariis*, where he is not originally party, he must be made party.

Now for the reason of this, that the king must be made party in a number of cases where a subject, if he were in the like case, should not have aid, but must abide the event of the first suit; it is, no doubt, partly in point of honour, because the law accounts the king's title, where it is connected with the right of the subject, to be the principal; like as in mines gold draws the copper, which is the subject though it be in less quantity; and partly and chiefly for the salvation of the king's rights.

For the king hath a number of privileges and prerogatives in his suits which the subject hath not. Thus his counsel shall be called to it, who are conversant and exercised in the learning of his prerogative, wherein common pleaders, be they never so good, are to seek; and in the pleadings and proceedings themselves of the king's suits, what a garland of prerogatives doth the law put upon them. Again, the king shall be informed of all his adversary's titles; the king's plea cannot be double, he may make as many titles as he will; the king's demurrer is not peremptory; he may waive it and join issue, and go back from law to fact: — with infinite others. Will you strip the king of all these, and make them as ordained in vain, by questioning his

right in a suit between common persons, which have no such privileges? This, indeed, is *læsa majestas;* for he that will tell me that the king's right shall be tried between *J. S.* and *J. D.* I will think him alike of kin to Jack Cade or Jack Straw.

How the King shall be made party.

This foundation being laid, that the king must be made party, then followeth the third point, which is, How he shall be made party?

It follows therefore of itself, *ex quâdam necessitate adamantinâ*, that the case can be held no longer in the Common Pleas or this Court, for you will not revive old fables (as Justinian calls things of that nature), *Præcipe Henrico regi, &c. Præcipe Jacobo regi, &c.* That you will not do; and yet it comes to that, if the king should be made a defender in this court, either directly or indirectly, as by *aid prayer*. Why then it follows that the suit must be in the Chancery, where suits are tried properly, where the king is never upon defence, and where the king's rights or charters are tried likewise properly; for there are petitions of right discussed; there are declarations of right, which we call *monstraunces de droit*, sued; there are traverses to offices; and there are *scire facias* brought for repealing letters patents: for you may not come with a *queritur* against the king, but you must humbly *supplicate* unto him, or modestly *disclose*, and lay before him your right, or civilly offer a *negative* of his right, as it is found. These be the ways that you must proceed in, when you have to deal with the majesty of a king; and for this, without all scruple, the Chancery is the court; the Chancery, I mean, in that capacity where it proceeds as a common law court, and not as a court of equity.

And this you see by all the books shall not be only in the case of a mere suit, where the king is only party; but in a mixed suit, where the king is party together with a subject, as in the case of *aid*.

Now then, if any man be so subtilely ignorant (for there is a kind of subtile ignorance) as to think that the drawing of the suit into the chancery should be in case of the *aid*, and not of the plea of *rege inconsulto;* or in the plea of *rege inconsulto*, but not where the writ is brought; he is a stranger to the books, neither doth he advise the consequence of that he says.

For, first, this is a ground that strikes silence into any man, and cannot be replied unto, *that whatsoever advantage the king may have upon the prayer of the party, the same or higher he must have upon his own writ;* else you expose and abandon the king's rights to the neglect or collusion of the party, and you allow the king to help another and will not allow him to help himself, which is more than absurd; and therefore the ground is sound and certain, that *wheresoever you may have the* AID *or the* PLEA, *there you shall have the* WRIT; *but not* E CONVERSO: for the king shall not watch with the eyes of the party, but with his own eyes and his counsel's.

Now to come to the authorities: for the *aid* I will not speak of them, because that is without colour or question; but for the *plea*, and for the *writ*, I will shew you plainly and plentifully, that the rule of the court, and the rule, or dismission (as I may term it), of the court, when the king's right is once in question (*et dies datus est ad, &c. et iterum sequatur penes ipsum regem*, which is ever understood of the Chancery), is not only in case of *aid*, but is common to the *rege*

inconsulto, either by *plea*, or by *office* of court, or by *writ*.

First, For the plea of judgment *si rege inconsulto*, you shall find, that although that plea and the *aid prayer* differ in the conclusion of the party, yet that the act of the court, and that which the court doth thereupon, is the same thing. For it is true, that if the party's state be too feeble to pray an aid, as when he is a copyholder and the like; or, on the other side, where the king's estate is too feeble to bear the nature of an aid, as when the lands are seised in respect of the king's tenant's alienation, whom he licensed, or in respect of the Prior alien or the like; in all these cases the proper and natural conclusion of the party's plea ought to be, *petit judicium, si rege inconsulto, &c.* and not *petit auxilium, &c.:* but the effect that follows thereupon is all one; for the court ceaseth, and the rule is, *sequatur penes ipsum regem*, and the court's hands are closed till a *procedendo* come. Nay, if you look advisedly into the books, you shall see that that which the court doth upon the *rege inconsulto* is termed *granting of an aid*, indifferently and promiscuously, as well as upon the *aid prayer* itself; for so are the books, which I cite unto you truly and punctually, of 3. Ass. *pl.* 1. 11 H. 4. fo. 39. 27 H. 8. fo. 10. in the which books the conclusion of the plea is, judgment *si le roy nient conseil;* and for the act of the court, the books *in terminis terminantibus* are thus, *et pleide fuit et habuit auxilium.*

And therefore for Thorpe's opinion, that is in 28. of this book of Assise, fol. 39. *Turpin's Case*, you must either give it a favourable construction, or else

you must bury it, and damn it under a heap of authorities.

The case was, that in an assise the defendant pleaded the charter of K. R. by the words *concessimus et dimissimus*, and not by *dedimus*, *tenenda* by certain services, and not by any rent, and so prayed in aid. Saith Skipwith, the more natural conclusion had been, *judgment if the king not consulted with;* which, no doubt, he meant, because there was in the charter neither word *dedimus* nor any rent: but what was done? The plea was adjourned, *et interim suer al Roy*, for the book is misprinted B. for R. which is easy to miss in the Dutch letter, for the R. is with the foot turned out, and the B. is with the foot turned in; but Brooke, in abridging it, hath it plainer, *sequatur penes ipsum regem*, and the other hath no sense. [Aid del Roy, pl. 78.]

Then follows a corollary of Thorpe's, being a kind of voluntary of his own; "There is a great difference "between the *aid* and the *rege inconsulto;* for in the "*aid* you must plead to the king himself, but in the "other not." This if Thorpe meant thus, — that in the case of the *aid* the king was in justice bound to take upon him the plea, whereas in the case of the *rege inconsulto* it is in his pleasure to waive the defence of the suit, and to grant a *procedendo*, — he saith somewhat; for the *aid* is the more obligatory to the king: but if he meant, that in the case of the *aid* the plea shall be discussed in the chancery, and in the case of the *rege inconsulto* it shall not, but that the king's counsel shall be assigned to the party, and so to go on in the first court; then it is (let me speak with reverence) but about sun-set, for clearly it is no law.

For, first, it is repugnant to the very case itself; for if so, then the court had not concluded *sequatur penes ipsum regem*, but to have denied the aid.

Secondly, The authorities are infinite against it, which are, beside the cases I vouched before this, 22. Ass. *pl.* 5. the same year, *pl.* 7. 39 E. 3. fo. 7. 7 H. 4. fo. 45. Ass. *pl.* 21. the same year, *pl.* 18. 45 H. 5. fo. 11. 21 H. 7. fo. 3. and infinite others.

In all which books, upon the plea of *rege inconsulto*, the rule and pale of the court is the plea, or *de abundant*[1] *suer al roy*.

Now for the writ itself: it is the like case, but much stronger. For the writ doth absolutely close the hands of the court; and then the subjects must have a suit that must be private or loyal:[2] not private, *ergo* loyal;[2] for that the suit should be in private to the king to have a *procedendo*, *absit verbum;* for God forbid that, upon the calling of Mr. Attorney or Mr. Solicitor, in the gallery, the king should determine the right of the subject; for wheresoever the law giveth the subject a right, it giveth a remedy in open court legally.

Two kinds of this writ.

It is true the writ, in the present case thereof, admits a subdivision: the one kind where it is purchased by the party in corroboration of his plea, either of *rege inconsulto*, or of aid; the other is a writ which proceedeth from the case of the King's Attorney, and is substantive in itself, and not induced by the plea of the party.

I will give you the books of these. For the writ induced by the plea you have 8. Ass. *pl.* 16. 22 Ass.

[1] So printed. I do not understand it.

[2] So printed. Perhaps law French for "legal."

this court; the tenement in question was Ontobie; and sir John Brograve called to it, who gave way, and a *procedendo*.

Now for the minor proposition, Whether the king's title come in question? No man can contradict it; for the question will be, Whether Mr. Michell hath disseised Mr. Brownlow of his fee? Mr. Michell must justify the king's letters patents made to him for his life of the office of clerk to write the writs of *supersedeas*, together with the fees accustomed: then the main question of the title must be, Whether the king may erect this office? and, Whether the king shall have a perpetual inheritance to confer it when it falleth?

So that this is a title of exceeding importance to the king; for the axe is put to the root of the tree, which root hath three strings: first, matter of profit; secondly, matter of power; thirdly, matter of example or consequence.

First, Matter of profit in the gift of this particular office. Secondly, matter of power: thus the question is, Whether the king, being head of justice and judicature, may not in his own courts collect into an office, and make a proper office for that which was *vagum quiddam*, and loosely and promiscuously executed and done by clerks before? Thirdly, Matter of example or consequence; for this leadeth to the overthrow, at the least, of ten letters patents of like nature already past, enjoyed, and settled, which I will now specify and enumerate unto you.

The patent of *subpœnas* in the Chancery, which formerly were written by all clerks that writ to that court, and was collected into an office in the 17th year

of Queen Elizabeth, and granted to George and Mark Williams.

The *subpœnas* out of the star-chamber, which both the clerks, under-clerks, and attornies of the court indifferently wrote, were collected into an office, and granted to Cotton, 1 Eliz.

The writing of *diem solvit extremum*, which is a legal writ, and for the subject as well as the king, which clerks of the petty bag did write, was collected into an office, and granted to Ludlowe and Dyer, 13 Eliz. 27 Martii.

The licence of alienation, formerly written by the clerks of the petty bag and the cursitor clerks, drawn into an office, and granted unto Edward Bacon, 13 Eliz. 23 April.

The writing of the *supplicavit supersedeas*, for the good behaviour of the peace, granted to sir George Cary, 33 Eliz. 1 Oct.

The writing of letters missive to York, granted to Lerton, in the King's time, 14 June, 4 Jac.

The writing of affidavits, drawn into an office, and granted to sir James Sutterton, 20 April, 13 Jac.

The making of extents upon the statutes staple in Queen Elizabeth's time.

The making of commissions to the delegates, in appeals from sentence ecclesiastical, in Queen Elizabeth's time.

That famous erection and constitution of the cursitors for original writs, which was attributed to my father as a great service, in the beginning of Queen Elizabeth's time, though afterwards it was confirmed by act of parliament.

There be more, but I will not be exact in enumer-

ation. My lord, for my part none of all these, no not this of Michell's now in question, ever passed my hands; they went all either before me or beside me, but, by the grace of God, I shall be able to defend them; for now, Mr. Brownlow, if you will overthrow all these, and lay open all these inclosures again, and become a kind of leveller, then we must look to you.

Now let the court judge, whether these be not a title whereto the king ought to be made a party, which is the only end and final cause of this writ; and so I leave that main part.

Now do I proceed to my second part, which is to be the efficient cause of this writ, which I declared to be the king's prerogative.

2ndly or the efficient cause.

This were a large field to enter into, and therefore I will only chuse such a walk or way in it as leadeth pertinently to the question in hand: wherein I will stand only on four prerogatives, which have a great affinity with that prerogative that did beget this writ; and in every of them I will conclude this cause *tanquam à fortiori.*

The first is in the liberty and choice the king hath to sue in what court he will; whereupon I make this observation, that if the king may sue in what court he will where he is demandant, *à fortiori* he may draw a plea from another court where he is upon his defence.

The second is the prerogative which the king hath of dilatories; whereupon I infer thus, that if the king in many cases may stay a suit simply and absolutely, *à fortiori* he may remove a suit to the proper court in his own case.

The third is that slow motion and gradation which the law hath devised and introduced in that which is the subject of the present disputation, namely, in the *aid* and in the *rege inconsulto:* which is this; the law hath devised that there must be a double *procedendo;* first, *in loquelâ* only; then, *ad judicium.* Whereupon I conclude, that if when there appears a cause of a *procedendo*, yet the suit shall not be at full liberty, but it is but as the opening of a double lock; *à fortiori* it is reason to arrest it at the beginning, before any cause of *procedendo* shewed.

And the last is some precedents of extraordinary mandates of the king in matters of justice, in cases where the king was not the party interested; whereupon I will also conclude, that if the king, out of his great power of administration and regiment of justice, when he is not interested, may make such mandate, *à fortiori* he may do it where he is interested, and where his disinherison cometh in question.

It is a great prerogative in opening of justice that the king may enter by what gate he will, and that the statute of *Magna Charta, communia placita non sequantur curiam nostram*, bindeth not the king; as if the king will bring a writ of escheat, which is merely a common plea, he may bring it in his court of the king's bench; which no subject can do. So is *Fitzherbert, Nat. Brev.* fo. 17. in his writ of right in London. So may he bring his *quare impedit, Ibid.* fo. 32. where you shall see the general ground is taken, that the king may sue that writ where it please him, according to the book of 46 E. 3. fo. 12. by Finchedon, and divers other books. So that *electio fori*, which

otherwise is limited and distributed where there are courts for several suits, is ever the king's.

Now then I conclude, *ut supra*, that the king shall lead and not be led; and that if the king shall have choice of his courts upon his demand, much more shall he have it upon his defence; for, as the Civilian saith well, *in petitione periclitatur lucrum, in defensione periclitatur damnum*, in the one case the king striveth for that he hath not, in the other case he is in hazard to lose that he hath.

For the second prerogative of mere dilatories, I will first put the case of the tenants of Northumberland. The tenants and inhabitants of Northumberland were so vexed by war with Scotland, that they could not till their lands; they were fain to betake themselves from the plough to the sword, *et curvæ rigidum falces conflantur in ensem;* whereupon the landlords brought their *cessavit*, because the land laid fresh, and they could not distrain for their rents and services. The king sends his mandates to the chancery, that no *cessavit* shall be granted; and to the judges of the common pleas, that if any *cessavit* come, they shall surcease the plea; and both courts hold it good.

In 22. Ass. pl. 9. the king's writ came, reciting, that it was ordained by the king and the great men of the realm, that an assise brought against any that were in the king's service in France should be stayed, and certifying that the defendant was at Calais in the king's service, and commanding the judges to discontinue the assise; and obeyed, notwithstanding, saith the book, the statute of 1 Ed. 3. that neither for great seal nor privy seal the court shall surcease; for that was meant in respect of letters and consideration of

favour between party and party, and not of mandates of state or upon legal interest in the king.

So I find a record in the exchequer, 17 E. 3. *Rot. Hiberniæ* 13. The citizens of Dublin sued Will. de Canall, who brought his writ of error in the king's bench of England. The king, disliking this tossing of justice upon the seas, sent his writ to the justices of this court, commanding *ut supersedeant in probatione errorum ad sectam Will. Canall versus cives de Dublin, et quòd recordum et processus loquelæ prædictæ transmittant justitiariis Hiberniæ.*

The like record I find 17 E. 3. *Rot. Hiberniæ* 37. between Jeffrey Greenfield and Jeanne de Tyrone, *ut supersedeant et transmittant;* and obeyed.

It may be said, that these cases seem to be but a case of point of state; but then take this with you, that the eye of the law of England ever beholds the king's treasure and profit as matter of state, as it is indeed; — they are the sinews of the crown.

The case in 4 E. 3. 19. and again fo. 21. is very notable, taking it with all the circumstances. Sherwood being attainted in redisseisin, and a *capias pro fine regis* awarded, was sued also in trespass, and a *capias pro fine* was awarded likewise in the trespass; whereupon a mandate by privy seal came to the court, reciting the conviction of the redisseisin, commanding the court to grant a *supersedeas* upon the *capias* in the trespass, for that the king would not that Sherwood should be molested or vexed with any process in the king's rights; and yet you know well, that upon the *capias pro fine* the defendant shall be in execution as well for the party as for the king. When this mandate by privy seal came, the judges were in

doubt what to do; and Crompton, the prothonotary, stept forth and said, that heretofore the like writ had come in the time of Fortescue, chief justice, who had disobeyed it. The judges, in the absence of Markham, then chief justice, began a little to bristle, and said, that it was not honourable for the court to waver, and to do one thing today and another thing tomorrow, and therefore they would do nothing till my lord Markham was present, who was judge in Fortescue's time, and he would sit with them the next term, and by the grace of God they would do according to their place and conscience. In Trinity term following, after this storm, Markham quietly, *sine strepitu*, granted the *supersedeas*, according to the king's command, and there is an end.

Now for the third point, it is but a note how wary the law is, after it hath taken notice of the king's title, to proceed; and therefore there must be a duplication of the *procedendo;* first, *in loquelâ;* then, *ad judicium.*

For although in the removing of the suit in the chancery there be no matter at all shewed for the king, yet the law giveth it not over, but is content there be a *procedendo* granted, with a restraint nevertheless that the court shall proceed as far as judgment, and no farther; and still lieth in wait to see what will come of it: and if upon issue or demurrer it finds any life in the case more than appeared in the first, the king may forbear the granting a *procedendo ad judicium;* nay in the meantime, if the defendant plead in chief, in maintenance of the king's title, the king's counsel shall be assigned to him for his better strength.

As to the last branch, that is, extraordinary mandates legal, in suits between party and party, you may

see two notable cases to one and the same intent; the one of 1 E. 3. title[1] *Crown*, pl. 125. the other 7 H. 6. fo. 31. where the king gives a direction to the judges what they should do, and prejudges their judgment: for the question being touching the custom of London of waging battle (for which citizens are not so fit); which custom, as all other customs, is subject to the judgment of the court whether it be lawful or no; the king leaveth it not to the court, but by his writ commands the judges to allow this custom, and so upon the matter tells them what they shall judge.

But of all the records that I have seen, that of 3 E. 1. Hil. Rot. 52. is most memorable, and worthy to be a kind of phylactery about the garments of all the judges. There was an assise of *darrein presentment* brought in the court of Chester by the prior of Kirkennett against Alice de Bello Campo, guardian of the body and land of Hamond de Macy, and it was of the church of Bonden. The king directed his writ to Reynold Gray, then justice of Chester, reciting, that whereas the said assise did depend before him, that the king did hold it fit to send down to the said justice there, from hence, *à latere regis* (for so are the words of the record), some discreet and circumspect person that might assist him in the taking of the assise; commanding him to surcease until three weeks, to be accounted from Midsummer then last past, by which time the king might send him such a person as he might think fit. Nevertheless the justice, in contempt of the king's commandment, took the assise before the term prefixed by the king's writ. And as it should seem by the record, this Gray

[1] Fitzh. *Coron.* pl. 125. gives the reference to 20 Ed. 3. Pasch., and, as abridged, it does not bear on Bacon's point.

was a kind of popular justice, and was incited and blown up with the speeches of the people about him, who murmured, and said, except he would go on according to the law, they would serve nor appear no more at any court; and so, with great triumph, he took the assise. Upon this, the record of assise by *venire facias* came into this high court of king's bench; and now I will read the words of the record itself, which I hold so memorable, that you may see what your predecessors did.

Et quia prædictus justitiarius non habet aliquam jurisdictionem vel potestatem cognoscendi in aliquâ loquelâ vel capiendi aliquam assisam nisi per prædictum dominum regem et ad ipsius voluntatem, et compertum est per recordum prædictum coram justitiariis domini regis, quòd non obstante mandato domini regis quòd ad captionem præfatæ assisæ non procedat usque ad dies Sancti Johannis Baptistæ prox. præterit' in tres septimanas tamen ad captionem ejusdem assisæ processit, videtur curiæ quòd idem justitiarius in capiendâ assisâ fecit quod de jure non potuit, maximè cùm non fuit, nec esse potuit justitiarius ad placitum illud, contra prædictum mandatum Domini Regis, ante prædictam diem; et ideo consideratum est quòd captio præfatæ assisæ non præjudicet quoad potuit, et sit in statu ac si prædicta assisa non fuisset.

I will conclude with an higher kind of assistance than the justice of Chester by some person from Westminster, and that was an assistance of the justices of this court by the chancellor and treasurer of England, and that at their own request. The record is this, and it is 31 E. 1. Rot. 46, 47. Henry Newbery levied a fine to Queen Elinor of certain lands in the counties of Somerset and Dorset; the steward and bailiff of the

Queen entered, and encroached upon a great deal of other lands that passed not by the fine. Newbery sat quiet as long as Queen Elinor lived; but as soon as she was dead, he questioned the bailiff in this court, and made petition to the King for restitution. The judges discerned somewhat (as it seems) that the party had right; but yet, taking occasion by the insufficiency of some inquisitions in the form of taking them, they thought good to cease, and conclude thus: — "The "justices dare not presume to proceed to their award "without a special commission of the King, which "might be to them a warrant of their award, which "nevertheless they would not should be turned to ex- "ample in other cases." Thereupon comes a privy seal to Sir William Hambleton chancellor, and the Bishop of Chester treasurer, commanding them to handle the business, and to assist the judges; and according to their opinion the court gave the award.

Now I proceed to my third part, which is, 3rdly. Of the material cause. the matter of this writ, which is, the king's loss, for that is the material cause of this writ.

Now for the king's loss, it may be in present, it may be in future; it may be direct, it may be indirect; and by consequence[1] it may be more, it may be less free; wherein I will shew you that which is worthy the observing; which is, how sharp-sighted the law of England is on the king's behalf to preserve his right from loss; for as it is the quality of a sharp eye to see small things, and things afar off, so you shall find that there is no loss to the king so little, or so remote, but that the law fetcheth it in by this writ; nay, it goeth far-

[1] I incline to put the stop here instead of after "indirect;" but I do not understand what is meant by "free." Qu. "sure?"

ther than the natural eye; for the natural eye never sees but in a straight line, but the eye of the law will see the king's loss in a crooked line, be it never so oblique or collateral.

In this I will now shew you a cloud of authorities, *nubem testium;* nevertheless, because I love not confusion, I will order them thus: I will make unto you a *scala damni*[1] *regis*, that is to say, a scale or gradation of the king's loss, beginning with the great, and so descending to the less, because of that there is more doubt; and so put a case or two of every kind.

The degrees therefore of the king's loss are in number nine, in every of which cases this writ lies.

The first is, where the king is to lose possession, or present[2] profit.

The second is, where the king is to lose a reversion; and that of two natures, either a true reversion, or a reversion only by conclusion.

The third, where he is to lose seignory, fee farm, or rent reserved.

The fourth is, where he is to lose by way of charging his possessions with any rent or profits, collateral or otherwise, by way of warranty or recompence.

The fifth is, where he is to lose any title, possibility, or contingency.

The sixth is, where the king is to lose any royal patronage, donative, or gift of office; which is our case.

The seventh is, where his title is any where prejudiced, foiled,[3] or blemished, or an evidence raised against him, though he lose nothing for the present.

The eighth is, where the king is to lose upon the

[1] Printed "*domini.*" [2] Printed "prevent."
[3] Printed "failed."

balance; that is, where he hath benefit two ways, the law will ever protect the greater benefit against the lesser, but not the lesser against the greater.

The ninth, and last, when the king is at no loss at all, but only his charter or patent is questioned, though the interest be wholly out of him: wherein though Mr. Serjeant Chibborne did labour and argue exceedingly well in maintaining that position generally, yet I, for my part, will not defend that point; but, with deference, in every of these I will put some cases the best and most select in the law, because I will not overlay you with numbers.

I will begin therefore where the king loseth possession or profit; and I will take the weakest and superficial kind of possessions and profits.

The Prior of Barnesey[1] was sued for certain land, and pleaded to issue; and at the day when the jury appeared, the Prior brought a writ (as we did in this case) to the justices, purporting, that whereas he was impleaded before them of certain lands, the King gave them to understand, that all the possessions of the said Prior were seized into his hands, because he was an alien of the obedience of France, requiring [them] therefore so circumspectly to deal and behave themselves, that they do nothing that may turn to the king's damage.

Hereupon, although it was pressed by the plaintiff's counsel, that the court might proceed as far as verdict, because the writ imported not that they should stay, but only look about them; yet says Stone, justice, "the King hath given us to know that the lands are "seized into his hands, and therefore we cannot hold

[1] 21 E. 4. 14.

"plea between the Prior and you of those lands which "are in the hands of the King;" as who should say, If the king give us leave, yet the law giveth us not leave; "therefore," saith he to that inquest, "God be "with you;" and to the party, "Sue to the king."

So here we have the case of this same surface, this superficies of title which the king had by way of pernancy of profits in case of the Prior alien, and yet good ground of this writ.

In a *præcipe quòd reddat*, at the day of the summons returned, the defendant brought a writ out of the chancery, reciting that the land in plea was held of the King by knight's service, and that such a one, the king's tenant, died seised thereof, his heir within age, whereby the lands were seized into the King's hands, commanding the judges not to proceed *rege inconsulto:* hereupon the tenant nevertheless was demanded. Saith Jenney, "To what purpose demand you him? For if "he come not, you cannot have a *grand cape* upon his "default; but you ought to sue to the king." Say Littleton and Choke, judges, "He must be demanded "to continue the process."

And the like law is of a *livery* in 11 Hen. 7. fo. .[1] For though it be questioned there, whether the writ of dower be well brought, yet of the aid no doubt is made; but I will grant that the king's interest may be so feeble as the suit shall not stay: and that I learn in the case of 11 H. 6. fo. 13. A man lets land to an Abbot for years, and an assise was brought against him of the same land; and the Abbot said that the King had seized his goods and chattels for dilapidations, and

[1] So printed; but the reference seems to be to Hil. T. 4 Hen. 7. pl. 1 See Fitz., *Aid del Roy*, pl. 33.

had also taken his goods and chattels into his protection; in this case aid was denied: and if the like matter were contained in the writ *de rege inconsulto*, the court, in my opinion, needeth not to stay for the seizure; for dilapidation is matter of ecclesiastical conusance; and the taking of the lands and goods into the king's hands by way of protection is no seizure to the king's use; so that neither of them are such possessions in the king as the law esteemeth, no more than in the case of the outlawry in a personal action. And if an assise be brought against one that is outlawed, and the king recite by his writ the outlawry, and that thereby he takes the profits of the lands, and thereupon commands the court to surcease, in this case I say the court ought not to surcease, for it is no such loss to the king, as the law values; for since the party may discharge the king's interest by feoffment, *à fortiori* it ought not to be any delay to an *issue of*[1] *right*.

Marry, I am of another opinion in the case of the lunatic, although the king hath but the profits upon account, because of the trust the law reposeth in the king for the party.

To proceed to the second degree, where the king is in reversion: if it be a reversion *de facto*, in state, of that I will put no cases; for, *perspicue*[2] *vera non sunt probanda*. But for the reversion by conclusion, it is a juror's case, and therefore fit to have authorities vouched in it. The difference, therefore, is taken in 24 E. 3. fo. 1. and 8 H. 6. fo. 25. and 1 H. 7. fo. 28. that if a man will plead, that the king, by his letters patents, did let unto him for life, or plead that a lease for life was made unto him, the remainder unto the

[1] I have added this word. [2] Printed *perspicua*.

king, and thereupon pray aid, he must in these cases shew letters patents or a deed inrolled; but if he plead positively, and substantively, that he is seised for life, the reversion to the Crown, and prayeth in aid, he needs shew nothing; because, although the king had nothing before, he is entitled to a reversion by conclusion.

This is a wonderful strong case, that an imaginary reversion, by matter of falsity gained hanging the writ, should give[1] cause of aid. And then see[2] the mischief; for it may be a delay in all cases in the world; no tenant in assise, or other real action, but may keep the demandant in play by this means, and make him plead with the king; yet so tender is the law, that it will not permit this imaginary right of the king to be questioned, without the king be called to it.

Come we now to the third degree of loss, which is when the king loseth seignory, fee-farm rent, or rent reserved. Take for that the case in 35 H. 6. fo. 46. the case between the Bishop of Winchester and the Prior of St. John of Jerusalem: there, in conclusion and judgment in the case, you shall see the difference notably taken by Prisot, that it is not simply a seignory or rent reserved that shall give cause of aid of the king, or ground of a writ or plea of *rege inconsulto*. For that indeed were a mischievous case; for all the king's tenants in England of[3] fee-farms might be in case of aid. But if the title of the plaintiff be paramount before the commencement of the king's seignories or rent, whereby the king may be defeated

[1] Printed "have."
[2] Printed "so," and with a comma only after aid.
[3] Printed "or."

of his seignories or rent, in whole or in part, by the eviction of the land, and so at loss, there the aid or the writ lieth, and not otherwise: for it is indifferent to the king who be his tenants, so they come all under his seignory or rents.

Upon the like reasons is the book in 31 Ass. pl. 27. where it appears that, if rent be reserved to the king by a lease, and the lessee be bound to bear all charges out-payments, and allowances, and a corody (as the case there was) is demanded, there the rent shall not give cause of aid; because, although he be evicted, yet the lessee is to pay his rent howsoever, and so the king hath no loss. But if the king had covenanted to have borne out the charge of such incumbrances or out-payments, it had been otherwise.

To proceed to the fourth degree, which is, when the king hath loss collateral. For the warranty, where it is expressed with a clause of recompence, whether in lieu of voucher or of damage, the learnings are so clear, that I will not put the books that the suit shall be to the king. As for the word *dedi*, that it should be a warranty in the king's case, whereas the proper word *warrantizabimus* will not serve without clause of recompence,[1] you shall, I mean, learn to doubt with books against the opinion of 1 H. 7. And for the collateral charge you may see the book, which is 3 Ass. pl. 1. where an assise was brought of a rent, and the defendant shews that he had the tenements[2] put in view of the lease of the king, and therefore that he conceiveth that there might not be a proceeding without taking counsel of the king: and thereupon the book says,

[1] Printed with a full stop, and new paragraph.

[2] Printed "tenancy." The case is in Br. *Aid del Roy*, pl. 70.

"Note, that in this case the aid is granted of another "thing than that is in demand;" and so no doubt is it of a common, and the like.

The fifth degree was title, possibility, or contingency; as if the king give land upon condition, and a *præcipe* be brought of this land, upon a title paramount the king's condition, &c. I hold in this case the king may stay the proceedings, and bring the suit before him in the chancery, for the safety of the condition. Sure I am, the case in 39 E. 3. fo. 8. is a much harder case, where dower was brought against the guardian, who pleaded that the ward's ancestor held other lands of the king in chief, and died, whereby the king seized and granted unto the tenant *usque ad plenam ætatem hæredis*, and demands judgment, *if the king not consulted with, &c.* In this case, upon debate, the aid was granted; and yet there was no rent reserved upon the patent, neither was there any remainder of the king in the estate, for it was granted until full age; and yet, because there was a possibility, that if the heir did live till full age he should sue his livery out of the king's hands, it was sufficient ground for the aid.

Come we now to the sixth degree, which is, where the king may have loss in respect of his patronage or gift of office, or the like.

For this you may see the case in 38 E. 3. fo. 28. b. the abbot of Lycull's case, where a deanery of the king's advowson was to be charged with an annuity, and a *scire facias* was brought against the dean upon an annuity [recovered [1]] against his predecessor. The dean said, that the king was seised of the advowson

[1] I have added this word.

of the deanery discharged of the annuity, and that he holds of the collation of the king; and so prayed aid: and after much debate, and divers objections that the writ of *scire facias* was in the nature of execution, and so no time to pray in aid; and again, that the predecessor had aid in the former suit, and so no aid should be in the latter; yet nevertheless aid was granted; and yet this was no more but a disvaluation of the king's patronage.

But 4 H. 6. fo. 1. is a case far more remote. Pipe brought a writ of entry, and the defendant said, that he was parson of the church of Dale, of the presentment of the Duke of Norfolk, and that the land in question is part of his glebe, and that the Bishop of Norwich is ordinary, which bishopric is vacant, and the temporalties seized into the king's hands, and so remain; and prays in aid of the Duke of Norfolk, as patron, and as to the ordinary, judgment, *whether the king not consulted with, &c.* The book is left at large, for they proceeded not; and yet the seizing of the temporalties had no affinity with the jurisdiction of the ordinary; but, because it did but touch or coast upon the king's right, and because the king is supreme, and the see of the inferior ordinary was void, the court was at a stand.

Now for the office. The best case in the law is 2 H. 7. fo. 7. where it seems the stander-by saw more than they that played; for the court erred, and the reporter was in the right, as appears by the adjournment of the cause before all the judges of England, who overthrew the former judgment, and confirmed the law according to the opinion of the reporter.

There the case was, Crofts brought an assise against

Edmund Kemperden, and made his plaint of the office of the keeper of the park of Woodstock, and the porter's place there, and made his title by the letters patents of King Ed. IV. The defendant intitled himself by letters patents of King Hen. VII., who granted to him for life, and prayed in aid of the king; and the judges denied the aid: but the same year, fo. 11. before all the judges, the aid was granted.

Place these two books together, and you shall find it amounts to this, that there were two objections made unto the aid. The one, because there was no clause of recompence or any rent reserved; the other, because both parties affirmed the king's title, and so the king was at no loss. To the first the answer is made, that the king, in the present case, hath loss, for that he hath in effect the reversion of the office, that he may grant it when it falls; for (as in Nevill's case) the king may have an office to grant, but not to execute. To the second answer is made, that it might be, the first patent was forfeited (the case being of an office which is subject to a forfeiture), and that thereupon a seizure was made by the king, and upon that seizure the latter patent was grounded, and so the king's act might come in question; and to justify that, therefore, the king must be a[1] party.

And if you will have a case, not of an office itself, but of an incident to an office (as the other case is of a fee), then you may take the case of Crofts and the lord Beauchamp, 10 H. 7. fo. 38. where the plaint being of a house and land, the tenant shewed a covenant, by deed inrolled, of a grant of an office of forester in tail, the remainder to King Edw. IV., the

[1] Printed "no."

truth being, that the house and land in question were incident to that office; and so prayed in aid: but there an averment was wanting; and upon that reason only aid could not be granted: but if it had been alleged by the plea, there had been no colour but the aid should be granted, as well in respect of the incident of the office as of the office itself.

To proceed to the seventh degree, which is, where the king loseth nothing, but only his title is prejudiced and blemished, and an evidence raised against it: for that there is one case, *instar omnium*, the famous case of 2 R. 3. fo. 13. b. John Hunston brought an action of the case against John bishop of Ely, for claiming him to be his villein, and for lying in wait to seize him; and the bishop justified, that he was his villein regardant to a certain manor of his see; and thereupon they were at issue; and hanging the plea, the bishop was disabled by parliament, and his temporalties forfeited to the king, who seized them. Hunston went on, and prayed the *nisi prius;* whereupon the king's attorney brought this writ, reciting the whole matter, and how the temporalties were seized into the king's hands, commanding the justices not to proceed *rege inconsulto*. What came of it before all the judges of England? It was agreed, *unanimi consensu*, that the writ should be obeyed; for they said, that although the king upon the action of the case did lose nothing, because the damages did reach [1] but to the party, yet nevertheless if the issue should be found for the plaintiff against the king, that he was not the bishop's villein, it might be a great evidence against the king's title, for the manor itself which was in his hands; so

[1] Printed "trench."

as the court kept aloof, and upon this oblique and remote consequence of prejudice to the king, the court did surcease.

The same learning you shall find in actions of like nature, as trespass, or *quare impedit*, wherein the king loseth nothing for the present, but nevertheless his title may be foiled; and although the books do vary in this point, yet you shall find the more constant resolution as I say. And for the trespass, take the book 9 H. 7. fo. 15. Bryant and Fairfax; and 27 H. 8. fo. 28. by Fitzherbert, "clearly there shall be no proceeding "without making the king[1] a party; no, not in tres-"pass." And the case of 5 H. 7. fo. 16. of the *quare impedit*, which seems to be to the contrary, is justly controlled and questioned by the reporter. But where the king may receive prejudice in his title, not in the same land, but other land upon the same title, it is another case. As if there is land upon the title of the lord Dacres, or the lord Latimer, &c., whereof part is in the Crown, and part out of the Crown, in fee-simple, without rent; if an assise be brought of the land which is out of the Crown, without any rent received, there certainly lies no aid, because it is not of the same thing; neither can that plea between two subjects ever be brought into the chancery; but whether some kind of writ of this nature may not be brought to stay such a suit, you shall give me leave to doubt.

Now to come to the eighth degree of loss, when the king is to lose any balance; it is comparative, where the king hath benefit on both sides, but yet with a disproportion.

[1] I have added "the king." Brook, *Aid del Roy*, pl. 1, gives the sense, but not the words of the text.

I will cite only that notable case which is 1 H. 4. fo. 8. where the case was, that the king had granted the office of measuring of linen cloth and canvas sold between foreigners unto John Butler, taking as Robert Sherwood took; there was an attachment upon prohibition against the mayor and sheriffs of London, for not putting him in possession, according to the clause in his patent: the defendants alleged, that they held the city of the king in fee-farm rendering rent; and that, if this office should take place, their farm should be impaired; and so pray aid of the king. In this case they were ousted of the aid; for that on the one side, if the office should stand, yet they should pay their fee-farm nevertheless; and on the other side, if the office should be overthrown, then the king's reversion and gift of the office should be lost, which should be his disherison, which was not equal: besides that, they were upon contempt (which is also against the king); and so the aid justly denied.

So if you alter the case in 1 H. 7. and put it that the king granted an office of keepership of a park by several patents, and upon the one patent the rent is reserved, and upon the other none; I say, that in this case, whethersoever of the patents be ancienter or later, the patent that hath the rent shall have the benefit of the aid, in destruction of the other, and not *è converso;* for it is the king's loss that sways the aid.

And for that I can shew a notable record, in a case between the Bishop of Ely and the city of Norwich.

As for the last degree, which is, if the king's charter be questioned, without any manner of loss to the king, that in such case the king must be made party; it is a reverend opinion, and supported with a great

deal of authorities; and no doubt it grew from that ancient maxim in Bracton, *In chartis regis non præsumant justitiarii regis disputare, sed tutius est ut expectent sententiam domini regis:* and certainly there are a great number of books on it, whereof the most direct are, 30 Ass. pl. 5. 2 H. 4. fo. 19. 2 H. 4. fo. 25. 33 H. 6. fo. 16.; for as for the books of 38 Ass. fo. 16. 39 E. 3. fo. 11. and 25 Ass. fo. 8. they may receive an answer, and no more perplex.

But I do take the law to be otherwise this day, except it be in charters which are of a higher nature than charters of lands or interest; and this error grew upon a misconstruction of the statute of bigamy; but because this is beyond the case in question, therefore I will not stand upon it: and here I conclude my third principal part.

4th cause. The form of the writ. Now come I to the last part, which is, *the form* of the writ, which doth require your attention as much or more than the former, because in that part will fall the removing of all the evasions and subterfuges which have been or can be used on the adverse part.

The writ hath, as I said[1] in the beginning, two parts; the recital or certificate, and the precept or mandate. For the first of these, I will divide that which I shall say into five points.

Five points.

First, I will grant that there must be a recital of the king's title in the writ.

Secondly, I will prove that the king's title recited need not to be grounded upon any precedent record.

Thirdly, I will prove that the certificate of the writ concerning that title is peremptory.

[1] Printed "find." See page 260.

Fourthly, I will prove that you must never question the king's title upon the writ.

And lastly, I will answer some weak objections that have been made, although the affirmative proof doth in itself take them away.

For the first point, I will grant that which I take to be law, which is, that the king must disclose his title specially in this writ; and therefore, upon this I hold it the proper place to tell you what writs I think are insufficient. First point.

First, If the writ be not[1] *ad idem*, that is, doth not sufficiently denominate the record that should be stayed, then there is no certainty, and so it cannot bind; as if the assise being of the fee only, the writ hath recited it to be of the office.

Secondly, I do confess, that among all the precedents of this writ which I have seen (which are very many), I never found any of a general writ, but that the king's title was ever expressed by way of recital; no writ of *certis de causis vobis mandamus quòd nullatenus procedatis;* no writ *pro eò quòd nos cogitamus quòd in prejudicium nostrum caderet, vobis mandamus, &c.;* but the subject is fairly dealt withal, and the king's title is ever disclosed; not because the court shall judge of the title, as I will tell you by and by, but because the party may be apprised how he may make his suit to the king; for it were a hard matter to say, "Sue to the king," and that the subject should not know upon what ground to sue: that were to leave him in a wood, and not in a way.

Thirdly, if the king's title be referred to a record, and the record destroyed it, then the court is not tied

[1] I have added this negative.

by the writ, as appears in Bedingfield's case, 18 Eliz.,[1] in a by-point; where the king's title was grounded upon an office recited in the writ, and the office extended not to divers lands comprised in the writ, there the original record, which the writ voucheth, governeth the writ itself, and destroyeth it for so much as is not contained in the office.

And lastly, I will not deny neither, but that if all the king's titles be admitted both in law and fact, and all the words of the writ received for true, and yet the king appears to be at no loss, that in that case the court is not bound to stay; as in the case that I put to you in the third part of my division, if the writ should be grounded upon an outlawry in a personal action, or seizure for dilapidations, or the like.

Second point. For the second point, that it needeth not that the king's title laid in the writ should be grounded upon any precedent record, as an inquisition, fine, or the like, but it is enough to recite letters patents of grants subsequent to the king's title, without going higher;[2] I think no man who is learned will deny it.

Put the case, the king is seised in *jure coronæ ab antiquo* of the honour of Windsor; will any man say, that if the king grant letters patents unto *J. S.* of part of the demesnes thereof, and an assise be brought against him, and there comes unto the justices a writ reciting, that whereas the king was seised in right of his crown of the manor of Windsor, in his demesne as of fee, and by his letters patents granted to *J. S.* such a close, part of the demesnes thereof; and whereas nevertheless the said *J. S.* is drawn into plea by assise before you, *ideo vobis mandamus quòd nobis inconsultis*,

[1] Co. Rep. 9.

[2] I have omitted the word "and."

&c. — will any man, I say, deny but this is a good writ, without vouching any original record of the king's title to the honour of Windsor?

In like manner, if the king shall recite in this writ his title by prescription to grant the office of *custos brevium* in the common pleas, or the like, is not this a sufficient shewing of a title? *A multo fortiori* in our case, where the letters patents are not extracted out of any actual possession precedent in the king, or out of any special prescription, but out of the fountain of his prerogative, and the potential part of his crown, which is *sine patre*, so as you must have this form of writ or none, — for there can be no record precedent, nor any prescription, of that which is merely created; and therefore, the difference that hath been spoken of between the old office and the new is idle, for the writ must be as the case is: if it be an ancient office, you must allege prescription; if a new, you must allege the power, as we have done. Now to say that the king cannot grant or erect any office *de novo*, no man, I think, will be such a plebeian (I mean both in science and honour) as so to affirm; I will cite no books for it; you have the book of time, which is the best book, and perpetual practice.

If the king will erect a county palatine (which is a little model of a monarchy subordinate), what a number of offices are incident to the same, and yet all *de novo*.

If the king should conceive Cornwall to be too far off to fetch their law from Westminster, and therefore would erect a king's bench and common pleas there, and create likewise clerks and prothonotaries, and assign them the same fee, or half the fee

that is received at Westminster, all these are offices *de novo*.

And in any[1] of these cases, if any such officers be disturbed (I mean of so many as the king hath ordained to be in his own gift), the defendant may have aid of the king, or the plea of *rege inconsulto*, or this writ; and yet in none of these cases can the king's title be founded upon record or prescription, because the office is new created. Neither is this the case of new offices alone, but the like reason is of patents of privileges for new inventions, and upon patents of fairs, markets, leets, liberties, and the like; upon all which there may be, and are, reserved valuable rents. In all which cases, if they are drawn in question, you shall have aid, or this writ; and yet in none of them you can allege either possession in the Crown, or precedent record or prescription; because they were never *in esse* before the king's grant, but issue out of the potential power of the Crown, being put in act and executed by grant subsequent.

And for the leet, you have the very case in 24 Eliz. fo. 6. where an action of the case was brought by the lord of the leet against *J. S.* for interrupting him to take a mark in money, which appertained to him by reason of an amerciament in his leet. The defendant pleaded a grant by letters patents from the king, with reservation of five pounds, to be paid into the exchequer; judgment, *whether the king not consulted with, &c.* This is our very case; there it was between an ancient leet and a leet newly created; and adjudged there that the suit should stay, and that it should be tried by suit with the king.

[1] Printed "many."

For the third point, that the certificate of the writ is peremptory, and the court is concluded to believe it, the difference is plain to him that can or will understand it, that in the plea *rege inconsulto* it sufficeth not the king's title appear only by way of allegation, except the party maintain it by record, or the court be apprised by the examination of the escheators, or commissioners; but otherwise it is upon the writ, the certificate whereof is peremptory. For this the case is in 20 Eliz. fo. 10. where a *scire facias* was brought to execute a fine, and the tenant said, that he held the manor of the lease of the king for life, the reversion to the king; and prayeth in aid, and sheweth forth no letters patents. And the court was not a little in debate, whether this amounted to such a plea as gave the king a reversion by conclusion, whereby he should shew nothing; "but," saith the book, "to stint the "strife, there came a writ out of the chancery testify-"ing the lease; and there was an end." Third point.

To the same purpose, the case is notable in the 22. of the book of Assise, fo. 24. An assise was brought against the Countess of Kent and John Fitz-Edmunds her son: and first, after some exception to the writ about the style of *countess*, the defendant pleaded that her husband held the land in chief of the king, and died, her son within age; whereupon the king seised, and let unto her during nonage; and demanded judgment, *that the king not consulted with, &c.*: "but," saith the book, "she shewed nothing; but, after, there "was a writ brought out of the chancery, reciting the "seizure, with a clause of *rege inconsulto*; and there-"upon the court awarded the plaintiff should sue to "the king."

So in the case 11 H. 4. fo. 39. where in dower of Kent, the tenant pleaded the seizure, *and if the king not consulted with, &c.;* "but the court gave no heed "to it" (saith the book), "till the baron of the ex- "chequer came, and brought in the seisure in his "hands, and thereupon the court awarded a suit to the "king;" but for the escheator, he must give oath of the seisure, and the counsel must shew this warrant; so as to the plea there must be a verification, but the king's writ must be believed.

And to conclude this point, I will put the famous case of *Arden* and *Darcy* unto this special point:[1] An action of waste was brought by *Arden* against *Darcy*, and *Darcy* pleaded the attainder of *Arden*, and the Queen's grant, reserving rent; *Arden* repleaded that there came to the king, by the attainder of his father, only an estate for life; *Darcy*, after special verdict and argument, obtained the writ of the *rege inconsulto;* whereupon Arden's counsel spake, and alleged that the Queen could be at no loss, for that if the tenant for life granted his estate, rendering rent, and[2] the lessor recovered the waste, he should hold charged: but the judges said, "The Queen hath certified us by her writ, "which is matter of record, that she shall be at loss if "this action proceed; which we ought to credit;" and so gave the rule, that Arden should sue to the Queen if he would.

Fourth point. For the fourth point, that the title of the king, — which is in our case, "Whether the king may "erect the writing of the *supersedeas* into a new office?

[1] This was the case Bacon had relied upon as a precedent for allowing the writ without argument.

[2] I have inserted this word.

" or whether Brownlow have right to it as belonging " to his office of prothonotary ? " — cannot be handled upon allowance of the writ, is without all colour or shadow.

For, first, it is *ex diametro* contrary to the intent of the writ ; for the intent of the writ is, that this question shall be tried in a suit in chancery with the king ; and now, under pretence of arguing the writ, you will enter into the title ; this is to enter by the window, and not by the door ; and that this may not be, there are infinite authorities.

As, first, you may see in 22 Assise, pl. 24. the Countess of Kent's case (mentioned before), where this writ was brought, reciting, that the king's tenant had died seised upon a gift in tail from the king, and that there the king had seized for wardship. Saith Pole, that was serjeant for the plaintiff, " Since the " king's charter of gift of entail, the plaintiff hath re- " covered by judgment against the tenant in tail ; " and so prayed the assise. Saith Hill, justice, " That shall " serve you for [1] title, when the king hath sent us his " pleasure ; therefore sue to the king."

So in 24 Ed. 3. *Brooke, Aid del Roy*, pl. 52. in a writ of entry against an infant, the tenant saith, that his ancestor had certain lands held of the Bishop of Durham by knight's service, whose temporalties are in the king's hands ; and shewed letters patents of the wardship, and prayed his aid. Saith Wilby, " He " should have demanded judgment, *if the king not* " *consulted with, &c.* ; " then the demandant would have pleaded, that the lands were held in socage in gavelkind, and not in knight's service ; and further would

[1] I have corrected the text, following Fitz. *Aid del Roy*, pl. 90.

have pleaded, that they were not comprised in the patent; but the court rejected the plea, because it went to the title.

So 33 H. 6. fo. 2. Danby gives it for a rule, that whensoever a man hath a patent of the king of certain lands, and assise is brought against him of other lands, and he prays in aid, *nient comprise* is no counter-plea to the aid; and yet it seemeth that the patent by this is confessed and avoided; and that it is not *ad idem*, but should be discussed in the other court. The same is affirmed by Fitzherbert clearly; for so are the words, "that upon the plea of *rege inconsulto*, grounded upon "letters patents, *nient comprise* is no plea." 27 H. 8. fo. 28.

So in 37 H. 6. fo. 32. the rule is given, that if in an assise the defendant plead, that such a one let unto him the manor of *S.* for life, the remainder to the king, and the plaintiff will say that he that let the land had nothing in the land; or, that the king took nothing by that lease; that shall not be tried in the first court, but in the chancery.

So in 7 H. 4. fo. 7. debt was brought upon a bargain and sale of goods, and the defendant said, that he bought the goods to the use of the king, and prayed in aid; and the plaintiff would have counter-pleaded, that they were bought to his own use, and not to the king's; but the court ousted him of that plea, for that shall be tried in the chancery.

In 38 Eliz. fo. 14. there the order of pleading and trial in the chancery is delineated and described in this manner: — When the plea comes into the chancery, first the point shall be tried, whether the king be interested or no; which the books call sometimes the

cause, and sometimes the warrant; and then you shall proceed to the title, and so to issue or demurrer; and if to issue, a *procedendo ad capiendam inquisitionem tantùm, &c.;* and if upon explaining the matter in the chancery (as the books call it), it fall out against the king, a *procedendo* shall be awarded in the nature of a command; and if it fall out for the king, there shall be a *supersedeas omnino*, and the court shall say to the parties, *allez à Dieu.*

Nay, further, the book of 8 H. 7. fo. 11. sheweth the learning notably, that if the plea be once in the chancery, although it be upon insufficient cause, the title shall be examined there for the king, and it is no error; so much regard the court had to the shadow only of the king's title, and the dignity of the court of chancery.

Therefore I conclude, that if in our case Mr. Brownlow will say, that the king nothing had in the office or fee to grant, and so the writ maketh no title for him; Mr. Brownlow knocketh at the wrong door, for *that* he shall allege in chancery.

For the objections: First, it is a mere cav- Last point.
illation, that because we have declared of *a new office*, and *an old fee*, that upon this the court is bound to take notice that the king hath no title.

For, first, this goeth to the title, and therefore cannot now be questioned, as I have proved before.

And, second, who knows not, that by *the same fees* are intended *the like fees;* which is the same in predicament, *viz.* in quantity; whereof I might put you infinite trivial cases that every mootman knoweth, that *idem redditus* shall be *similis redditus*, and why not *eadem feoda* be *similia feoda:* but I suppose that

Mr. Attorney that then was, thought this the fittest and most honourable form of penning the patent, because it doth point out and demonstrate that the king raiseth no new charge upon the subject; and besides, most of the precedents of the patents which I recited before, are penned in the same manner.

As for the second objection, which is more of clamour than of argument, and rather to be chastised than confuted, "that by this means all suits may be stayed "upon a supposed right of the king's;" this is, I hope, at an end. You see that this writ is no delay, but a bringing of the plea to the proper court. And the very same may be said of the praying aid, for affirming the reversion of the king, without any thing shewing; which may be done in all assises of lands and tenements, in respect of the king's reversion gained by conclusion.

The like may be said likewise of all writs of *rege inconsulto* certifying of the king's seizures; which are peremptory, that[1] they should not be tried; and the king may recite what he will, for it cannot be counter-pleaded.

As for that point which Mr. Solicitor did admit, I shall differ from him; I think he went too far. Saith Mr. Solicitor, The judges may *ex scrinio pectoris*[2] take notice of the right of an office in their own court, and of the law thereupon; so that if any thing contrary to that be recited in the king's writ, they are not to be bound thereby; but I say the law is otherwise, for it is but reputation of right, and not certainty of right, that the court may concede upon usage and their private knowledge; for the court knoweth not what

[1] Printed "though." [2] Printed "prætoris."

records or other proof may be shewed on the king's part. I pray let the king have that measure against the subject, that the subject hath against the king; and you shall find the subject's right shall not be prejudiced upon a private notice of the court, that it is not judicial. And for that take 25 E. 3. Fitzh. *Aid del Roy*,[1] where in a *præcipe* the defendant made default, and it was alleged, nay it appeareth upon evidence, saith the book, that the reversion was in the king; and, saith the book further, the court would take no heed of it, but saith, it behoveth to bring a writ in the nature of a *receit*, and then we must give credit to it. And yet if this conceit pleaseth any man, it is not our case; for this might have been alleged if the assise had been brought in the common pleas, for Brownlow is an officer there and not here.

And lastly, if there should be some incongruity in the writ, as I know it was formed of as good counsel (not speaking of myself, but of the rest) as is in England, or hath been; but if, I say, Mr. Brownlow will read us a lecture, he is never the nearer, for we can have a new writ if we will: it is not like *double aid*, if there should be fault in this writ. But sure I am that the matter is infallible; that whether this office and fee be lawfully created and confirmed by the King by his letters patents to Michell, or whether it be in disturbance of the freehold of Mr. Brownlow, this must be discussed *penes ipsum regem;* and if I were to advise again, I would not alter one word of this writ.

Now, as for the command of this writ, — by myself, long since, when I first opened this case in this court, truly distributed into four kinds:

[1] Apparently a wrong reference.

A minatory commandment;
A conditional commandment;
A peremptory commandment, temporary;
And a peremptory commandment, absolute and peremptory.

The first kind is the *circumspectè agatis*, where the writ purporteth an admonition to the court to be circumspect in their proceedings, that they do nothing in prejudice of the king, without any other commandment of stay.

The second is, the *si vobis constare poterit*, where the writ doth lay it upon any special point, the truth thereof to be examined being left to the court, so as the commandment is conditional.

The third is, where the writ is peremptory, but yet is for a time, and is *donec aliud habueritis in mandatis*, or *nobis inconsultis non procedatis*, which implies as much; and of this kind is our writ.

And the fourth is *supersedeas omnino*, with an *allez à Dieu* to the plaintiff; which final writ is never but after the discussing of the plea in the chancery.

For the court's obedience, which is the relative to the mandate of the king, I said in the beginning, that the judges have ever been the principal examples of obedience to the king; and I will note unto the court four points, which I find in their predecessors concerning this writ.

First, their wisdom and circumspection; for I may truly observe, that when this writ was brought, they have ever done less than their warrant.

So you see in the case 21 E. 3. where the writ was but a *circumspectè agatis*, yet when the plaintiff's counsel urged they might at least take the verdict, yet the court stayed presently.

So likewise in divers cases, where the writ was conditional, *si vobis constare poterit;* yet the court had no mind to meddle in it after that writ brought, nor to examine that point, which seemed to be left to them at large.

So as still their obedience was more absolute than the commandment; and the court hath ever esteemed this writ as a thing sacred: for as it was the right of the Romans, that where a man's wall joined to a temple, if the owner had occasion to pull down his house, he left some of his own wall, lest he should touch the sacred wall; so the court would never venture upon the utmost bound of this writ, lest they should touch upon violation of the king's command.

Secondly, I note the reference which the judges used in 2 R. 3. in Hunston's case, where, after the writ was brought by the king's attorney, the judges would not suffer any public argument, but assembled in a private manner, the door shut, and upon conference agreed to obey the writ, for they thought it a thing of no good example to dispute the king's commandment; as if they were like the soldiers which Tacitus speaketh of, *erant in officio, sed tamen quasi mallent imperantis mandata interpretari quàm exequi.*

Thirdly, I note the great humility of the judges in the phrase of the court upon this writ, where still they say, their hands are closed; as if they were turned statues or images, and that they had no power or motion.

Lastly, I may note the danger of your predecessors in 1° of the book of Assise, where, [Bro. Aid del Roy. 69.] although this writ was not brought, yet because the court did not of themselves *ex officio* regard sufficiently

the king's title, it was said, the justice was suspended from his office, and was *in moult graund danger.*

To conclude, I will reduplicate that which I said in the beginning, that this writ did ever stay the suit when it came, except only in two cases.

The one in a direct case of an act of parliament to the contrary, *quòd non supersedeant*, as in *Bedingfield's* case, 28 Eliz.

And the other is where in respect of a mischief, the court did proceed only *de bene esse*, lest that a *procedendo* should after come, and come too late.

The case was,[1] that an action of deceit was brought, and before the summoners were examined this writ came; whereupon, after Danby had said that their hands were closed, Prisot very worthily untied the knot; saying, "The mischief is great in this case, for, "if the summoners should die before examination, the "plaintiff hath lost his action and his land for ever, "although a *procedendo* should come after;" and compared it to the case of the writ of error for infancy, where perhaps the infant was near his full age: if the writ should be brought of the *rege inconsulto*, and then the full age should run on before inspection, the writ of error was gone and lost, and the fine good for ever. "This therefore will we do," saith he: "examine the "summoner *de bene esse*, but with protestation withal, "that we expect a *procedendo* to come." This was good justice, and yet true obedience; but in no other case shall you ever find that the writ was disobeyed.

Therefore I will end with this to your lordship and the rest, that *obedience is better than sacrifice;* that[2] is a

[1] 35 H. 6.

[2] Printed "it;" the two words are easily confounded in abbreviations. The reference is obviously to sacrifice.

voluntary thing, and it is many times a glory or fame; but obedience is ever acceptable.

I know the prothonotaries are servants of the court; but I know the court will more remember whom *they* serve, than who serves *them;* and therefore I pray, as the king commands, that the proceedings in this assise be stayed, and that the plaintiff be ordered to sue to the king, if he will.[1]

[1] Brook, Patents, 12; 13 H. 4. 14; 11 H. 4. 86.

PREPARATION FOR THE UNION OF LAWS.

PREFACE.

THIS paper, the object of which needs no explanation, has heretofore been printed with some additions, an account of which will be given further on. It stands here as it is to be found in Harl. MSS. 6797; the body of it, after the introductory matter, being written wide and on the alternate pages: — obviously to admit corrections and additions, and in order that the corresponding Scotch law might be entered opposite. If any authentication of it, as having passed through Bacon's hands, were wanting beyond the introduction, it is to be found in a few corrections, one of which Mr. Spedding informs me is certainly in Bacon's hand, and others may very well be so.

I should not have thought more than the introduction now worth printing (and that in the next Division of the Works) had it not already appeared: and I may say the same of the whole of the paper that next follows.

A

PREPARATION

TOWARD

THE UNION OF LAWS.

YOUR Majesty's desire of proceeding towards the union of this whole island of Great Britain under one law, is (as far as I am capable to make any opinion of so great a cause) very agreeable to policy and justice. To policy, because it is one of the best assurances (as human events can be assured) that there will be never any relapse in any future ages to a separation. To justice, because *dulcis tractus pari jugo:* it is reasonable that communication of privilege draw on communication of discipline and rule. This work being of greatness and difficulty, needeth not to embrace any greater compass of designment, than is necessary to your Majesty's main end and intention. I consider therefore, that it is a true and received division of law into *jus publicum* and *privatum*, the one being the sinews of property, and the other of government. For that which concerneth private interest of *meum* and *tuum*, in my simple opinion, it is not at this time to be meddled with: men love to hold their own as they have held, and the difference of this law carrieth

no mark of separation. For we see in any one kingdom, which is most at unity in itself, there is diversity of customs for the guiding of property and private rights: *in veste varietas sit, scissura non sit.* All the labour is to be spent in the other part; though perhaps not in all the other part: for it may be your Majesty, in your high wisdom, will discern that even in that part there will not be requisite a conformity in all points. And although such conformity were to be wished, yet perchance it will be scarcely possible in many points to pass them for the present by assent of Parliament. But because we, that serve your Majesty in the service of our skill and profession, cannot judge what your Majesty, upon reason of state, will leave and take; therefore 'tis fit for us to give, as near as we can, a general information. Wherein I, for my part, think good to hold myself to one of the parallels, I mean that of the English laws. For although I have read, and read with delight, the Scottish statutes, and some other collection of their laws; with delight I say, partly to see their brevity and propriety of speech, and partly to see them come so near to our laws; yet I am unwilling to put my sickle in another's harvest, but to leave it to the lawyers of the Scottish nation; the rather, because I imagine with myself that if a Scottish lawyer should undertake, reading of the English statutes, or other our books of law, to set down positively in articles what the law of England were, he might oftentimes err: and the like errors, I make account, I might incur in theirs. And therefore, as I take it, the right way is, that the lawyers of either nation do set down in brief articles what the law is of their nation, and then after, a book of

two columns, either having the two laws placed respectively, to be offered to your Majesty, that your Majesty may by a ready view see the diversities, and so judge of the reduction, or leaving it as it is.

Jus publicum I will divide, as I hold it fittest for the present purpose, into four parts. The first, concerning criminal causes, which with us are truly accounted *publici juris*, because both the prejudice and the prosecution principally pertain to the Crown and public estate. The second, concerning the causes of the Church. The third, concerning magistrates, officers, and Courts; wherein falleth the consideration of your Majesty's regal prerogative, whereof the rest are but streams. And the fourth, concerning certain special politic laws, usages, and constitutions, that do import the public peace, strength, and wealth of the kingdom. In which part I do comprehend not only constant ordinances of law, but likewise forms of administration of law, such as are the commissions of the peace, the visitations of the provinces by the judges of the circuits, and the like. For these in my opinion, for the purpose now in hand, deserve a special observation, because they being matters of that temporary nature as they may be altered, as I suppose, in either kingdom, without Parliament, as to your Majesty's wisdom may seem best, it may be the most profitable and ready part of this labour will consist in the introducing of some uniformity in them.

To begin therefore with capital crimes, and first that of TREASON.

Cases of treason.

Where a man doth compass or imagine the death of the king, if it appear by any overt act, it is treason.

Where a man doth compass or imagine the death of the king's wife, if it appear by overt act, it is treason.

Where a man doth compass or imagine the death of the king's eldest son and heir, if it appear by any overt act, it is treason.

Where a man doth violate the king's wife, it is treason.

Where a man doth violate the king's eldest daughter unmarried, it is treason.

Where a man doth violate the wife of the king's eldest son and heir, it is treason.

Where a man doth levy war against the king, in his realm, it is treason.

Where a man is adherent to the king's enemies, giving them aid and comfort, it is treason.

Where a man counterfeiteth the king's great seal, it is treason.

Where a man counterfeiteth the king's privy seal, it is treason.

Where a man counterfeiteth the king's privy signet, it is treason.

Where a man doth counterfeit the king's sign manual, it is treason.

Where a man counterfeits the king's money, it is treason.

Where a man bringeth into the realm false money, counterfeited to the likeness of the coin of England, with intent to merchandise or make payment therewith, and knowing it to be false, it is treason.

Where a man counterfeiteth any foreign coin current in payment within this realm, it is treason.

Where a man doth bring in foreign money, being current within the realm, the same being false and counterfeit, with intent to utter it, and knowing the same to be false, it is treason.

Where a man doth clip, wash, round, or file any of the king's money, or any foreign coin current by proclamation, for gain's sake, it is treason.

Where a man doth any ways impair, diminish, falsify, scale, or lighten the king's moneys, or any foreign moneys current by proclamation, it is treason.

Where a man killeth the chancellor, being in his place and doing his office, it is treason.

Where a man killeth the treasurer, being in his place and doing his office, it is treason.

Where a man killeth the king's justice in eyre, being in his place and doing his office, it is treason.

Where a man killeth the king's justice of assize, being in his place and doing his office, it is treason.

Where a man killeth the king's justice of *Oyer* and *Terminer*, being in his place and doing his office, it is treason.

Where a man doth persuade or withdraw any of the king's subjects from his obedience, or from the religion by his majesty established, with intent to withdraw him from the king's obedience, it is treason.

Where a man is absolved, reconciled, or withdrawn from his obedience to the king, or promiseth his obedience to any foreign power, it is treason.

Where any Jesuit, or any other priest, ordained since the first year of the reign of queen Elizabeth, shall

come into, or remain in any part of this realm, it is treason.

Where any person being brought up in a college of Jesuits, or seminary, shall not return within six months after proclamation made, and within two days after his return submit himself to take the oath of supremacy, if otherwise he do return, or be within the realm, it is treason.

Where a man doth affirm or maintain any foreign authority of jurisdiction spiritual, or doth put in ure or execute any thing for the advancement or setting forth thereof, such offence, the third time committed, is treason.

Where a man refuseth to take the oath of supremacy, being tendered by the bishop of the diocese if he be an ecclesiastical person; or by commission out of the chancery if he be a temporal person; such offence the second time is treason.

Where a man committed for treason doth voluntarily break prison, it is treason.

Where a jailor doth voluntarily permit a man committed for treason to escape, it is treason.

Where a man procureth or consenteth to a treason, it is treason.

Where a man relieveth or comforteth a traitor, knowing it, it is treason.

The punishment, trial, and proceedings in cases of treason.

In treason, the corporal punishment is by drawing on hurdle from the place of the prison to the place of execution, and by hanging and being cut down alive, bowelling, and quartering: and in women by burning.

In treason, there ensueth a corruption of blood in the line ascending and descending.

In treason, lands and goods are forfeited, and inheritances, as well intailed as fee-simple, and the profits of states for life.

In treason, the escheats go to the king, and not to the lord of the fee.

In treason, the lands forfeited shall be in the king's actual possession without office.

In treason there be no accessaries, but all are principals.

In treason, no benefit of clergy, or sanctuary, or peremptory challenge.[1]

In treason, if the party stand mute,[2] yet nevertheless judgment and attainder shall proceed all one as upon verdict.

In treason, bail is not permitted.

In treason, no counsel is to be allowed to the party.

In treason, no witness shall be received upon oath for the party's justification.

In treason, if the fact be committed beyond the seas, yet it may be tried in any county where the king will award his commission.

In treason, if the party be *non sanæ memoriæ*, yet if he had formerly confessed it before the king's council, and that it be certified that he was of good memory at the time of his examination and confession, the court may proceed to judgment without calling or arraigning the party.

In treason, the death of the party before conviction dischargeth all proceedings and forfeitures.

[1] These last three words are added in Bacon's own hand.

[2] In the first draft there followed, "or challenge peremptorily above the number that the law allows," which are struck out.

In treason, if the party be once acquit, he shall not be brought in question again for the same fact.

In treason, no new case not expressed in the statute of 25 Ed. III. nor made treason by any special statute since, ought to be judged treason, without consulting with the parliament.

In treason, there can be no prosecution but at the king's suit, and the king's pardon dischargeth.

In treason, the king cannot grant over to any subject power and authority to pardon it.

In treason, a trial of a peer of the kingdom is to be by special commission before the lord high steward, and those that pass upon him to be none but peers; and the proceeding is with great solemnity, the lord steward sitting under a cloth of estate with a white rod of justice in his hand; and the peers may confer together, but are not any ways shut up, and are demanded by the lord steward their voices one by one, and the plurality of voices carrieth it.

In treason, it hath been an ancient usage and favour from the kings of this realm to pardon the execution of hanging, drawing, and quartering; and to make warrant for their beheading.

The proceeding in case of treason with a common subject is in the king's bench, or by commission of *Oyer* and *Terminer*.

MISPRISION OF TREASON.

Cases of misprision of treason.

Where a man concealeth high treason only, without any comforting or abetting, it is misprision of treason.

Where a man counterfeiteth any foreign coin of gold or silver not current in the realm, it is misprision of treason.

The punishment, trial, and proceeding in cases of misprision of treason.

The punishment of misprision of treason is by perpetual imprisonment, loss of the issues of their lands during life, and loss of goods and chattels.

The proceeding and trial is, as in cases of treason.

In misprision of treason bail is not admitted.

PETIT TREASON.

Cases of petit treason.

Where the servant killeth the master, it is petit treason.

Where the wife killeth her husband, it is petit treason.

Where a spiritual man killeth his prelate, to whom he is subordinate and oweth faith and obedience, it is petit treason.

Where the son killeth the father or mother, it hath been questioned whether it be petit treason, and the late experience and opinion seemeth to weigh to the contrary, though against law and reason in my judgment.[1]

The punishment, trial, and proceeding in cases of petit treason.

In petit treason, the corporal punishment is by drawing on a hurdle, and hanging.

[1] See *ante*, vol. xiv. p. 233, vol. xv. p. 184.

In petit treason, the forfeiture is the same with the case of felony.

In petit treason, all accessories are but in case of felony.

FELONY.

Cases of felony.

Where a man committeth murder, that is, homicide of prepensed malice, it is felony.

Where a man committeth manslaughter, that is, homicide of sudden heat and not of malice prepensed, it is felony.

Where a man committeth burglary, that is breaking of an house with an intent to commit felony, it is felony.

Where a man rideth armed, with a felonious intent, it is felony.

Where a man doth maliciously and feloniously burn a house, it is felony.

Where a man doth maliciously and feloniously burn corn upon the ground, or in stacks, it is felony.

Where a man doth maliciously cut out another's tongue, or put out his eyes, it is felony.

Where a man robbeth or stealeth, that is, taketh away another man's goods, above the value of twelvepence, out of his possession, with an intent to conceal it, it is felony.

Where a man embezzleth or withdraweth any of the king's records at Westminster, whereby any judgment is reversed, it is felony.

Where a man that hath custody of the king's armour, munition, or other habiliments of war, doth ma-

liciously convey away the same, to the value of twenty shillings, it is felony.

Where a servant hath goods of his master's delivered unto him, and goeth away with them, it is felony.

Where a man conjures or invocates wicked spirits, it is felony.

Where a man doth use or practise any manner of witchcraft, whereby any person shall be killed, wasted, or lamed in his body, it is felony.

Where a man practiseth any witchcraft, to discover treasure hid, or to discover stolen goods, or to provoke unlawful love, or to impair or hurt any man's cattle or goods, the second time, having been once before convicted of like offence, it is felony.

Where a man useth the craft of multiplication of gold or silver, it is felony.

Where a man committeth rape, it is felony.

Where a man taketh away a woman against her will, not claiming her as his ward or bondwoman, it is felony.

Where any person marrieth again, her or his former husband or wife being alive, it is felony.

Where a man committeth buggery with man or beast, it is felony.

Where any persons, above the number of twelve, shall assemble themselves with intent to put down enclosures, or bring down the prices of victuals, &c. and do not depart after proclamation, it is felony.

Where man shall use any words to encourage or draw any people together, *ut supra*, and they do assemble accordingly, and do not depart after proclamation, it is felony.

Where a man being the king's sworn servant conspireth to murder any lord of the realm or any of the privy council, it is felony.

Where a soldier hath taken any parcel of the king's wages, and departeth without licence, it is felony.

Where a man receiveth a seminary priest, knowing him to be such a priest, it is felony.

Where a recusant, which is a seducer and persuader and inciter of the king's subjects against the king's authority in ecclesiastical causes, or a persuader of conventicles, &c. shall refuse to abjure the realm, it is felony.

Where vagabonds be found in the realm, calling themselves *Egyptians*, it is felony.

Where a purveyor taketh without warrant, or otherwise doth offend against certain special laws, it is felony.

Where a man hunteth in any forest, park, or warren, by night or by day, with vizards or other disguisements, and is examined thereof, and concealeth his fact, it is felony.

Where a man stealeth certain kinds of hawks, it is felony.

Where a man committeth forgery the second time, having been once before convicted, it is felony.

Where a man transporteth rams or other sheep out of the king's dominions, the second time, it is felony.

Where a man being imprisoned for felony breaks prison, it is felony.

Where a man procureth or consenteth to a felony to be committed, it is felony, as to make him accessary before the fact.

Where a man receiveth or relieveth a felon, know-

ing thereof, it is felony, as to make him accessary after the fact.

Where a woman, by the constraint of her husband, in his presence, joineth with him in committing of felony, it is not felony, neither as principal nor as accessary.

The punishment, trial, and proceeding in cases of felony.

In felony, the corporal punishment is by hanging, and it is doubtful whether the king may turn it into beheading in the case of a peer or other person of dignity; because in treason the striking off the head is part of the judgment, and so the king pardoneth the rest, but in felony it is no part of the judgment, and the king cannot alter the execution of law: yet precedents have been both ways.

In felony, there followeth corruption of blood, except it be in cases made felony by special statutes with a proviso that there shall be no corruption of blood.

In felony, lands in fee-simple and goods are forfeited, but not lands intailed, and the profits of states for life are likewise forfeited: And by some customs lands in fee-simple are not forfeited;

Father to the bough, son to the plough.

In felony, the escheats go to the lord of the fee, and not to the king, except he be lord: But the profits of states for lives, or in tail during the life of tenant in tail, go to the king; and the king hath likewise, in fee-simple lands holden of common lords, *annum, diem, et vastum.*

In felony, the lands are not in the king before office, nor in the lord before entry or recovery in writ of escheat, or death of the party attained.

In felony, there can be no proceeding with the accessary before there be a proceeding with the principal; which principal if he die, or plead his pardon, or have his clergy before attainder, the accessaries can never be dealt with.

In felony, if the party stand mute, and will not put himself upon his trial, or challenge peremptorily above the number that the law allows, he shall have judgment not of hanging, but of penance of pressing to death; but then he saves his lands, and forfeits only his goods.

In felony, at the common law, the benefit of clergy or sanctuary was allowed; but now by statutes it is taken away in most cases.

In felony, bail may be admitted, where the fact is not notorious and the person not of evil fame.

In felony, no counsel is to be allowed to the party, no more than in treason.

In felony, no witness shall be received upon oath for the party's justification, no more than in treason.

In felony, if the fact be committed beyond the seas, or upon the seas, *super altum mare*, there is no trial at all in the one case, nor by course of jury in the other case, but by the jurisdiction of the Admiralty.

In felony, if the party be *non sanæ memoriæ*, although it be after the fact, he cannot be tried nor adjudged, except it be in course of outlawry, and that is also erroneous.

In felony, the death of the party before conviction dischargeth all proceedings and forfeitures.

In felony, if the party be once acquit, or in peril of judgment of life lawfully, he shall never be brought in question again for the same fact.

In felony, the prosecution may be either at the king's

suit by way of indictment, or at the party's suit by way of appeal, and if it be by way of appeal, the defendant shall have his counsel, and produce witnesses upon oath, as in civil causes.

In felony, the king may grant *hault justice* to a subject, with the regality of power to pardon it.

In felony, the trial of peers is all one as in case of treason.

In felony, the proceedings are in the king's bench, or before commissioners of *Oyer* and *Terminer*, or of gaol delivery, and in some cases before justices of peace.

Case of Felonia de se, *with the punishment, trial, and proceeding therein.*

In the civil law, and other laws, they make a difference of cases of *felonia de se:* for where a man is called in question upon any capital crime, and killeth himself to prevent the law, they give the same judgment in all points of forfeiture, as if they had been attainted in their life-time: and on the other side, where a man killeth himself upon impatience of sickness or the like, they do not punish it at all. But the law of England taketh it all in one degree, and punisheth it only with loss of goods to be forfeited to the king, who generally granteth them to his *Almoner*, where they be not formerly granted unto special liberties.

OFFENCES OF PRÆMUNIRE.

Cases of Præmunire.

Where a man purchaseth or accepteth any provision, that is, collation of any spiritual benefice or living, from the see of Rome, it is case of præmunire.

venticles, and shall not after conform himself within a time, and make his submission, he shall abjure the realm, and forfeit his goods and his lands during life; and if he depart not within the time prefixed, or return, he shall be in the degree of a felon.

Where a man being a popish recusant, and not having lands to the value of twenty marks per annum, nor goods to the value of 40*l.*, shall not repair to his dwelling or place where he was born, and there confine himself within the compass of five miles, he shall abjure the realm; and if he return, he shall be in the degree of a felon.

Where a man kills the king's deer in chases or forests, and can find no sureties after a year's imprisonment, he shall abjure the realm.

Where a man is a trespasser in parks, or in ponds of fish, and after three years' imprisonment cannot find sureties, he shall abjure the realm.

Where a man is a ravisher of any child within age, whose marriage belongs to any person, and marrieth the said child after years of consent, and is not able to satisfy for the marriage, he shall abjure the realm.

OFFENCE OF HERESY.

Case of heresy, and the trial and proceeding therein.

The declaration of heresy, and likewise the proceeding and judgment upon heretics, is by the common laws of this realm referred to the jurisdiction ecclesiastical, and the secular arm is reached unto them by the common laws (and not by any statute) for the execution of them by the king's writ *de hæretico comburendo.*

ANSWERS TO QUESTIONS

PROPOSED BY

SIR ALEXANDER HAY.

PREFACE.

THIS Paper was printed in 1641 with other matter, as mentioned further on. As it is clearly a separate piece, complete in itself, I have placed it here, following the *Preparation towards the Union of Laws*, with which it is obviously connected in design.

Sir Alexander Hay was Secretary of State for Scotland in 1608, the date assigned to this Paper, at which time the project for the union was on foot. In the copy in the Lansdowne MSS. it is said to have been written at the request of Lord Northampton, who became Lord Privy Seal in that year. It can hardly be doubtful that it was intended to assist in preparing an assimilation of the administration of England and Scotland.

THE ANSWERS TO QUESTIONS

PROPOUNDED BY

SIR ALEXANDER HAY, KNT.

TOUCHING THE OFFICE OF CONSTABLE.

A.D. 1608.

---

1. Question. *What is the original of constables?*

Answer. To the first question of the original of constables it may be said, *caput inter nubila condit;* for the authority was granted upon the ancient laws and customs of this kingdom practised long before the Conquest, and intended and executed for conservation of peace, and repression of all manner of disturbance and hurt of the people; — and that as well by way of prevention as punishment: but yet so, as they have no judicial power, to hear and determine any cause, but only a ministerial power, as in the answer to the seventh article is demonstrated.

As for the office of high or head constable, the original of that is yet more obscure; for though the high-constable's authority hath the more ample circuit (he being over the hundred, and the petty-constable over the village), yet I do not find that the petty-constable is subordinate to the high-constable, or to be ordered or commanded by him; and therefore, I doubt, the high-

constable was not *ab origine;* but that when the business of the county increased, the authority of justices of peace was enlarged by divers statutes, and then, for conveniency sake, the office of high-constable grew in use for the receiving of the commandments and prescripts from the justices of peace, and distributing them to the petty-constables: and in token of this, the election of high-constable in most parts of the kingdom is by the appointment of the justices of the peace, whereas the election of the petty-constable is by the people.

But there are two things unto which the office of constables hath special reference, and which of necessity, or at least a kind of congruity, must precede the jurisdiction of that office; — either the things themselves, or something that hath a similitude or analogy towards them.

1. The division of the territory, or gross of the shires, into hundreds, villages, and towns; for the high-constable is officer over the hundred, and the petty-constable is over the town or village.

2. The court-leet, unto which the constable is attendant and minister; for there the constables are chosen by the jury, there sworn, and there that part of their office which concerneth information is principally to be performed: for the jury being to present offences and offenders, are chiefly to take light from the constable of all matters of disturbance and nuisance of the people; which they, in respect of their office, are presumed to have best and most particular knowledge of.

The jurisdiction of the court-leet is to three ends.

1. To take the ancient oath of allegiance of all males above twelve years.

2. To inquire of all offences against the peace; and for those that are against the crown and peace both, to inquire of only, and certify to the justices of gaol delivery; but those that are against the peace simply, they are to inquire of and punish.

3. To inquire of, punish, and remove all public nuisances and grievances concerning infection of air, corruption of victuals, case of chaffer and contract, and[1] all other things that may hurt or grieve the people in general, in their health, quiet, and welfare.

And to these three ends, as matters of policy subordinate, the court-leet hath power to call upon the pledges that are to be taken of the good behaviour of the resiants that are not tenants, and to inquire of all defaults of officers, as constables, ale-tasters, and the like: and likewise for the choice of constables, as was said.

The jurisdiction of these leets is either remaining in the king, and in that case exercised by the sheriff in his Turn, which is the grand leet, or granted over to subjects; but yet it is still the king's court.

2. Quest. *Concerning the election of constables?*

Answ. The election of the petty-constable, as was said, is at the court-leet by the inquest that make the presentments; and election of head-constables is by the justices of the peace at their quarter sessions.

3. Quest. *How long is their office?*

Answ. The office of constable is annual, except they be removed.

4. Quest. *Of what rank or order of men are they?*

Answ. They be men, as it is now used, of inferior, yea of base condition, which is a mere abuse or de-

[1] I have substituted this word for "of."

generating from the first institution; for the petty-constables in towns ought to be of the better sort of resiants in the same: save that they be not aged or sickly, but of able bodies in respect of keeping watch and toil of their place; nor must they be in any man's livery. The high-constables ought to be of the ablest freeholders, and substantiallest sort of yeomen, next to the degree of gentlemen; but should not be incumbered with any other office, as mayor of a town, under-sheriff, bailiff, etc.

5. Quest. *What allowance have the constables?*

Answ. They have no allowance, but are bound by duty to perform their office *gratis;* which may the rather be endured because it is but annual, and they are not tied to keep or maintain any servants or under-ministers, for that every one of the king's people within their limits are bound to assist them.

6. Quest. *What if they refuse to do their office?*

Answ. Upon complaint made of their refusal to any one justice of peace, the said justice may bind them over to the sessions, where, if they cannot excuse themselves by some allegation that is just, they may be fined and imprisoned for their contempt.

7. Quest. *What is their authority or power?*

Answ. The authority of the constable, — as it is substantive and of itself, or substituted and astricted to the warrants and commands of the justices of the peace, — so again it is original, or additional: for either it was given them by the common law, or else annexed by divers statutes. And as for subordinate power, wherein the constable is only to execute the commands of the justices of peace, and likewise the additional power which is given by divers stat-

utes, it is hard to comprehend them in any brevity; for that they do correspond to the office and authority of justices of peace, which is very large, and are created by the branches of several statutes: but for the original and substantive power of constables, it may be reduced to three heads; namely,

1. For matter of peace only.
2. Of peace and the crown.
3. For matter of nuisance, disturbance, and disorder, although they be not accompanied with violence and breach of the peace.

First, For pacifying of quarrel begun, the constable may, upon hot words given, or likelihood of breach of the peace to ensue, command them in the King's name to keep peace, and depart, and forbear: and so he may, where an affray is made, part the same, and keep the parties asunder, and arrest and commit the breakers of the peace, if they will not obey; and call power to assist him for that purpose.

For punishment of breach of peace past, the law is very sparing in giving any authority to constables, because they have not power judicial, and the use of his office is rather for preventing or staying of mischief, than for punishment of offences: for in that part he is rather to execute the warrants of the justices; or, when sudden matter ariseth upon his view of notorious circumstances, to apprehend offenders, and to carry them before the justices of peace, and generally to imprison in like cases of necessity, where the case will not endure the present carrying of the party before the justices. And so much for peace.

Secondly, For matters of the crown, the office of the constable consisteth chiefly in these four parts:

1. To arrest.
2. To make hue and cry.
3. To search.
4. To seise goods.

All which the constable may perform of his own authority, without any warrant from the justices of the peace.

1. For, first, if any man will lay murder or felony to another's charge, or do suspect him of murder or felony, he may declare it to the constable, and the constable ought, upon such declaration or complaint, to carry him before a justice of peace; and if by common voice or fame any man be suspected, the constable ought to arrest him, and bring him before a justice of peace, though there be no other accusation or declaration.

2. If any house be suspected for receiving or harbouring of any felon, the constable, upon complaint or common fame, may search.

3. If any fly upon the felony, the constable ought to raise hue and cry.

4. And the constable ought to seise his goods, and keep them safe without impairing, and inventary them in presence of honest neighbours.

Thirdly, For matters of common nuisance and grievances, they are of very variable nature, according to the several comforts which man's life and society requireth, and the contraries which infest the same.

In all which, be it matter of corrupting air water or victuals, stopping straightening or indangering of passages, or general deceits, in weights, measures, sizes, or counterfeiting wares, and things vendible; the office of constable is to give, as much as in him lies, information

of them and of the offenders, in leets, that they may be presented; but because leets are kept but twice in the year, and many of those things require present and speedy remedy, the constable, in things notorious and of vulgar nature, ought to forbid and repress them in the mean time: if not, they are for their contempt to be fined or imprisoned, or both, by the justices in their sessions.

8. Quest. *What is their oath?*

Answ. The manner of the oath they take is as followeth:

"You shall swear that you shall well and truly serve the King, and the lord of this law-day; and you shall cause the peace of our sovereign lord the King well and truly to be kept to your power: and you shall arrest all those that you see committing riots, debates, and affrays in breach of peace: and you shall well and truly endeavour yourself to your best knowledge, that the statute of Winchester for watching, hue and cry, and the statutes made for the punishment of sturdy beggars, vagabonds, rogues, and other idle persons coming within your office be truly executed, and the offenders be punished: and you shall endeavour, upon complaint made, to apprehend barraters and riotous persons making affrays, and likewise to apprehend felons; and if any of them make resistance with force and multitude of misdoers, you shall make outcry and pursue them till they be taken; and shall look unto such persons as use unlawful games; and you shall have regard unto the maintenance of artillery; and you shall well and truly execute all process and precepts sent unto you from the justices of the peace of the county; and you shall make good and faithful

presentments of all bloodsheds, out-cries, affrays, and rescues made within your office: and you shall well and truly, according to your own power and knowledge, do that which it belongeth to your office of constable to do, for this year to come. So help," etc.

9. Quest. *What difference is there betwixt the high-constables and petty-constables?*

Answ. Their authority is the same in substance, differing only in the extent; the petty-constables serving only for one town, parish, or borough; the head-constable for the whole hundred: nor is the petty-constable subordinate to the head-constable for any commandment that proceeds from his own authority; but it is used, that the precepts of the justices be delivered unto the high-constables, who being few in number, may better attend the justices, and then the head-constables, by virtue thereof, make their precepts over to the petty-constables.

10. Quest. *Whether a constable may appoint a deputy?*

Answ. In case of necessity a constable may appoint a deputy, or in default thereof, the steward of the court leet may: which deputy ought to be sworn before the said steward.

The constable's office[1] consists in three things:

1. Conservation of the peace.
2. Serving precepts and warrants.
3. Attendance for the execution of statutes.

[1] This seems to be part of a tabular view of this and other matters of law, and not properly to belong to the *Answers*. See p. 374.

ORDINANCES IN CHANCERY.

PREFACE.

THERE is, I believe, no official copy of these Ordinances extant: there are, however, but few and mere verbal discrepancies among the MSS. and editions I have seen.

There are, in print and in manuscript, earlier orders extant: but an attempt to determine how far Bacon altered existing practice, or for the first time fixed it, and how far he only collected rules previously dispersed, is a task for an historian of the Court of Chancery. A comparison of these Ordinances with the Aphorisms in the 8th Book *De Augmentis* will, I think, point out some of them as probably Bacon's own.

In Harl. MSS. 1576 — in which volume are also some Orders of Lord Ellesmere — there are fifteen additional rules, which from the place in which they occur would seem to be Bacon's. As I should not have printed the original Ordinances had they not already been incorporated in the collected Works, so I omit these others. It may, however, be worth mentioning that the first few of them are for regulating or inaugurating a kind of creditors' suit *inter vivos* for enforcing a compulsory composition, where three-fourths of the creditors agree.

ORDINANCES

MADE BY

THE LORD CHANCELLOR BACON,

FOR THE BETTER AND MORE REGULAR ADMINISTRATION OF JUSTICE IN THE CHANCERY.

TO BE DAILY[1] OBSERVED, SAVING THE PREROGATIVE OF THE COURT.

Decrees.

No decree shall be reversed, altered, or explained, being once under the great seal, but upon bill of review: and no bill of review shall be admitted, except it contain either error in law, appearing in the body of the decree without farther examination of matters in fact, or some new matter which hath risen in time after the decree, and not any new proof which might have been used when the decree was made: nevertheless upon new proof, that is come to light after the decree made, and could not possibly have been used at the time when the decree passed, a bill of review may be grounded by the special license of the court, and not otherwise.

2. In case of miscasting, being a matter demonstrative, a decree may be explained and reconciled by an order, without a bill of review; not understanding, by miscasting, any pretended misrating or misvaluing, but only error in the auditing or numbering.

[1] In some MSS. it is "duly."

3. No bill of review shall be admitted, or any other new bill to change matter decreed, except the decree be first obeyed and performed: as, if it be for land, that the possession be yielded; if it be for money, that the money be paid; if it be for evidences, that the evidences be brought in; and so in other cases which stand upon the strength of the decree alone.

4. But if any act be decreed to be done which extinguisheth the parties' right at the common law, as making of assurance, or release, acknowledging satisfaction, cancelling of bonds or evidences, and the like; those parts of the decree are to be spared until the bill of review be determined; but such sparing is to be warranted by public order made in court.

5. No bill of review shall be put in, except the party that prefers it enter into recognisance with sureties for satisfying of costs and damages for the delay, if it be found against him.

6. No decrees shall be made, upon pretence of equity, against the express provision of an act of parliament: nevertheless if the construction of such act of parliament hath for a time gone one way in general opinion and reputation, and after by a later judgment hath been controlled, then relief may be given upon matter of equity for cases arising before the said judgment; because the subject was in no default.

7. Imprisonment for breach of a decree is in nature of an execution; and therefore the custody ought to be strait, and the party not to have any liberty to go abroad, but by special licence of the lord chancellor; but no close imprisonment is to be, but by express order for wilful and extraordinary contempts and disobedience, as hath been used.

8. In case of enormous and obstinate disobedience in breach of a decree, an injunction is to be granted *sub pœna* of a sum; and upon affidavit, or other sufficient proof of persisting in contempt, fines are to be pronounced by the lord chancellor in open court, and the same to be estreated down into the hanaper, if cause be, by a special order.

9. In case of a decree made for the possession of land, a writ of execution goes forth; and if that be disobeyed, then process of contempt according to the course of the court against the person, unto a commission of rebellion: and then a serjeant at arms by special warrant: and in case the serjeant at arms cannot find him, or be resisted, or upon the coming in of the party, and his commitment, if he persist in disobedience, an injunction is to be granted for the possession; and in case also that be disobeyed, then a commission to the sheriff to put him into possession.

10. When the party is committed for the breach of a decree, he is not to be enlarged until the decree be fully performed, in all things which are to be done presently. But if there be other parts of the decree to be performed at days or times to come, then he may be enlarged by order of the court upon recognisance, with sureties to be put in for the performance thereof *de futuro;* otherwise not.

11. Where causes come to a hearing in court, no decree bindeth any person who was not served with process *ad audiendum judicium*, according to the course of the court, or did appear *gratis* in person in court.

12. No decree bindeth any that cometh in *bona fide* by conveyance from the defendant before the bill ex-

hibited, and is made no party, neither by bill nor the order: but where he comes in *pendente lite*, and while the suit is in full prosecution, and without any colour of allowance or privity of the court, there regularly the decree bindeth; but if there were any intermission of suit, or the court made acquainted with the conveyance, the court is to give order upon the special matter according to justice.

Dismissions 13. Where causes are dismissed upon full hearing, and the dismission signed by the lord chancellor, such causes shall not be retained again, nor new bill exhibited, except it be upon new matter, like to the case of the bill of review.

14. In case of all other dismissions, which are not upon hearing of the cause, if any new bill be brought, the dismission is to be pleaded; and after reference and report of the contents of both suits, and consideration taken of the former orders and dismission, the court shall rule the retaining or dismissing of the new bill, according to justice and the nature of the case.

15. All suits grounded upon wills nuncupative, leases parol, or upon long leases that tend to the defeating of the king's tenures; or for the establishing of perpetuities; or grounded upon remainders put into the crown, to defeat purchasers; or for brokage or rewards to make marriages; or for bargains at play and wagers; or for bargains for offices contrary to the statute of 5 and 6 Ed. VI.; or for contracts upon usury or simony, are regularly to be dismissed upon motion, if they be the sole effect of the bill, and if there be no special circumstances to move the court to allow

their proceedings: and all suits under the value of ten pounds are regularly to be dismissed. *V. postea* § 60.

16. Dismissions are properly to be prayed, and had, either upon hearing, or upon plea unto the bill, when the cause comes first into court; but dismissions are not to be prayed after the parties have been at charge of examination, except it be upon special cause.

17. If the plaintiff discontinue the prosecution, after all the defendants have answered, above the space of one whole term, the cause is to be dismissed of course without any motion; but after replication put in, no cause is to be dismissed without motion and order of the court.

18. Double vexation is not to be admitted; but if the party sue for the same cause at the common law and in chancery, he is to have a day given to make his election where he will proceed, and in default of making such election to be dismissed. Election of suits.

19. Where causes are removed by special *certiorari* upon a bill containing matter of equity, the plaintiff is, upon receipt of his writ, to put in bond to prove his suggestions within fourteen days after the receipt; which if he do not prove, then upon certificate from either of the examiners, presented to the lord chancellor, the cause shall be dismissed with costs, and a *procedendo* to be granted. *Certiorari.*

20. No injunction of any nature shall be granted, revived, dissolved, or stayed upon any private petition. Injunction.

21. No injunction to stay suits at the common law shall be granted upon priority of suit only, or upon surmise of the plaintiff's bill only; but upon matter confessed in the defendant's answer, or matter of record, or writing plainly appearing, or when the defendant is in contempt for not answering, or that the debt desired to be stayed appeareth to be old, and hath slept long, or the creditor or the debtor hath been dead some good time before the suit brought.

22. Where the defendant appears not, but sits an attachment; or when he doth appear, and departs without answer, and is under attachment for not answering; or when he takes oath that he cannot answer without sight of evidences in the country; or where after answer he sues at common law by attorney, and absents himself beyond sea; in these cases an injunction is to be granted for the stay of all suits at the common law, until the party answer or appear in person in court and the court give farther order: but nevertheless upon answer put in, if there be no motion made the same term, or the next general seal after the term, to continue the injunction in regard of the insufficiency of the answer put in, or in regard of matter confessed in the answer, then the injunction to die and dissolve without any special order.

23. In the case aforesaid, where an injunction is to be awarded for stay of suits at the common law, if the like suit be in the chancery, either by *scire facias*, or privilege, or English bill, then the suit is to be stayed by order of the court, as it is in other courts by injunction; for the court cannot injoin itself.

24. Where an injunction hath been obtained for staying of suits, and no prosecution is had for the space

of three terms, the injunction is to fall of itself without farther motion.

25. Where a bill comes in after an arrest at the common law for debt, no injunction shall be granted without bringing the principal money into court, except there appear in the defendant's answer, or by sight of writings, plain matter tending to discharge the debt in equity: but if an injunction be awarded and disobeyed, in that case no money shall be brought in or deposited, in regard of the contempt.

26. Injunctions for possession are not to be granted before a decree, but where the possession hath continued by the space of three years, before the bill exhibited, and upon the same title; and not upon any title by lease, or otherwise determined.

27. In case where the defendant sits all the process of contempt, and cannot be found by the serjeant at arms, or resists the serjeant, or makes rescue, a sequestration shall be granted of the land in question; and if the defendant render not himself within the year, then an injunction for the possession.

28. Injunctions against felling of timber, ploughing up of ancient pastures, or for the maintaining of inclosures, or the like, shall be granted according to the circumstances of the case; but not in case where the defendant upon his answer claimeth an estate of inheritance, except it be where he claimeth the land in trust, or upon some other special ground.

29. No sequestration shall be granted but of lands, leases, or goods in question, and not of any other lands or goods not contained in the suits. Sequestrations.

30. Where a decree is made for a rent to be paid out

of land, or a sum of money to be levied out of the profits of land, there a sequestration of the same lands, being in the defendant's hands, may be granted.

31. Where the decrees of the provincial councils, or of the court of requests, or the queen's court, are by contumacy or other means interrupted; there the court of chancery, upon a bill preferred for corrobations of the same jurisdictions, decrees, and sentences, shall give remedy.

32. Where any cause comes to a hearing, that hath been formerly decreed in any other of the king's courts at Westminster, such decree shall be first read, and then to proceed to the rest of the evidence on both sides.

Suits after judgment.

33. Suits after judgment may be admitted according to the ancient custom of the chancery and the late royal decision of His Majesty, of record, after solemn and great deliberation: but in such suits it is ordered, that bond be put in with good sureties to prove the suggestions of the bill.

34. Decrees upon suits brought after judgment shall contain no words to make void or weaken the judgment, but shall only correct the corrupt conscience of the party, and rule him to make restitution, or perform other acts, according to the equity of the cause.

Orders, and the office of the Registers.

35. The registers are to be sworn, as hath been lately ordered.

36. If any order shall be made, and the court not informed of the last material order formerly made, no benefit shall be taken by such order, as granted by abuse and surreption; and to that end the regis-

ters ought duly to mention the former order in the later.

37. No order shall be explained upon any private petition, but in court as they are made, and the register is to set down the orders as they were pronounced by the court truly, at his peril, without troubling the lord chancellor, by any private attending of him, to explain his meaning; and if any explanation be desired, it is to be done by public motion, where the other party may be heard.

38. No draught of any order shall be delivered by the register to either party, without keeping a copy by him; to the end that if the order be not entered, nevertheless the court may be informed what was formerly done, and not put to new trouble and hearing; and to the end also that knowledge of orders be not kept back too long from either party, but may presently appear at the office.

39. Where a cause hath been debated upon hearing of both parties, and opinion hath been delivered by the court, and nevertheless the cause referred to treaty, the registers are not to omit the opinion of the court, in drawing of the order of reference, except the court doth specially declare that it be entered without any opinion either way; in which case, nevertheless, the registers are out of their short note to draw up some more full remembrance of that that passed in court, to inform the court if the cause come back and cannot be agreed.

40. The registers, upon sending their draught unto the counsel of the parties, are not to respect the interlineations or alterations of the said counsel, be the said counsel never so great, farther than to put them in re-

membrance of that which was truly delivered in court, and so to conceive the order, upon their oath and duty, without any farther respect.

41. The registers are to be careful in the penning and drawing up of decrees, and specially in matters of difficulty and weight; and therefore when they present the same to the lord chancellor, they ought to give him understanding which are such decrees of weight, that they may be read and reviewed before his lordship sign them.

42. The decrees granted at the rolls are to be presented to his lordship, with the orders whereupon they are drawn, within two or three days after every term.

43. Injunctions for possession, or for stay of suits after verdict, are to be presented to his lordship together with the orders whereupon they go forth, that his lordship may take consideration of the order before he sign them.

44. Where any order upon the special nature of the case shall be made against any of these general rules, there the register shall plainly and expressly set down the particular reasons and grounds moving the court to vary from the general use.

References. 45. No reference upon a demurrer, or question touching the jurisdiction of the court, shall be made to the masters of the chancery; but such demurrers shall be heard and ruled in court, or by the lord chancellor himself.

46. No order shall be made for the confirming or ratifying of any report without day first given, by the space of a sevennight at the least, to speak to it in court.

47. No reference shall be made to any master of the court, or any other commissioners, to hear and determine, where the cause is gone so far as to examination of witnesses, except it be in special causes of parties near in blood, or of extreme poverty, or by consent: and general reference of the state of the cause, except it be by consent of the parties, to be sparingly granted.

48. No report shall be respected in court, which exceedeth the warrant of the order of reference.

49. The masters of the court are required not to certify the state of any cause as if they would make breviate of the evidence on both sides, which doth little ease the court, but with some opinion; or otherwise, in case they think it too doubtful to give opinion, and therefore make such special certificate, the cause is to go on to a judicial hearing, without respect had to the same.

50. Matters of account, unless it be very weighty causes, are not fit for the court, but to be prepared by reference; with this difference nevertheless, that the cause come first to a hearing, and upon the entrance into a hearing they may receive some direction, and be turned over to have the accounts considered; except both parties, before hearing, do consent to a reference of the examination of the accounts, to make it more ready for a hearing.

51. The like course to be taken for the examination of court rolls, upon customs and copies; which shall not be referred to any one master, but to two masters at the least.

52. No reference to be made of the insufficiency of an answer, without showing of some particular point of the defect; and not upon surmise of the insufficiency in general.

53. Where a trust is confessed by the defendant's answer, there needeth no farther hearing of the cause, but a reference presently to be made upon the account, and so to go on to a hearing of the accounts.

Suits in court.

54. In all suits where it shall appear, upon the hearing of the cause, that the plaintiff had not *probabilem causam litigandi*, he shall pay unto the defendant his utmost costs, to be assessed by the court.

Bills, demurrers, answers, pleadings, and copies.

55. If any bill, answer, replication, or rejoinder, shall be found of an immoderate length, both the party and the counsel under whose hand it passeth shall be fined.

56. If there be contained in any bill, answer, or other pleading, or any interrogatory, any matter libellous or slanderous against any that is not party to the suit, or against such as are parties to the suit upon matters impertinent, or in derogation of the settled authority of any of His Majesty's courts; such bills, answers, pleadings, or interrogatories, shall be taken off the file and suppressed, and the parties severally punished by commitment or ignominy, as shall be thought fit, for the abuse of the court: and the counsellors at law, who have set their hands, shall likewise receive reproof or punishment, if cause be.

57. Demurrers and pleas which tend to discharge the suit shall be heard first upon every day of orders, that the subject may know whether he shall need farther attendance or no.

58. A demurrer is properly upon matter defective contained in the bill itself, and no foreign matter;

but a plea is of foreign matter to discharge or stay the suit, as that the cause hath been formerly dismissed, or that the plaintiff is outlawed or excommunicated, or there is another bill depending for the same cause, or the like: and such plea may be put in without oath in case where the matter of the plea appears upon record; but if it be any thing that doth not appear upon record, the plea must be upon oath.

59. No plea of outlawry shall be allowed without pleading the record *sub pede sigilli;* nor plea of excommunication, without the seal of the ordinary.

60. Where any suit appeareth upon the bill to be of the natures which are regularly to be dismissed according to the fifteenth ordinance, such matter is to be set forth by way of demurrer.

61. Where an answer shall be certified insufficient, the defendant is to pay costs: and if a second answer be returned insufficient, in the points before certified insufficient, then double costs, and upon the third treble costs, and upon the fourth quadruple costs, and then to be committed also until he hath made a perfect answer, and to be examined upon interrogatories touching the points defective in his answer; but if any answer be certified sufficient, the plaintiff is to pay costs.

62. No insufficient answer can be taken hold of after replication put in, because it is admitted sufficient by the replication.

63. An answer to a matter charged as the defendant's own fact must be direct, without saying it is to his remembrance, or as he believeth, if it be laid to be done within seven years before: and if the defendant deny the fact, he must traverse it directly, and not by way of negative pregnant; as if a fact be laid to be

done with divers circumstances, the defendant may not traverse it literally as it is laid in the bill, but must traverse the point of substance; so if he be charged with the receipt of one hundred pounds, he must traverse that he hath not received a hundred pounds, or any part thereof; and if he have received part, he must set forth what part.

64. If a hearing be prayed upon bill and answer, the answer must be admitted to be true in all points; and a decree ought not to be made, but upon hearing the answer read in court.

65. Where no counsel appears for the defendant at the hearing, and the process appears to have been served, the answer of such defendant is to be read in court.

66. No new matter is to be contained in any replication, except it be to avoid matter set forth in the defendant's answer.

67. All copies in chancery shall contain fifteen lines in every sheet thereof, written orderly and unwastefully, unto which shall be subscribed the name of the principal clerk of the office where it is written, or his deputy, for whom he will answer, for which only subscription no fee at all shall be taken.

Commissions, examinations, and depositions.

68. All commissions for examination of witnesses shall be *super interr. inclusis* only, and no return of depositions into the court shall be received, but such only as shall be either comprised in one roll subscribed with the names of the commissioners, or else in divers rolls whereof each one shall be so subscribed.

69. If both parties join in commission, and upon

warning given the defendant bring his commissioners, but produce no witness, nor minister interrogatories, but after seek a new commission, the same shall not be granted: but nevertheless upon some extraordinary excuse of the defendant's default, he may have liberty granted by special order to examine his witnesses in court upon the former interrogatories, giving the plaintiff or his attorney notice, that he may examine also if he will.

70. The defendant is not to be examined upon interrogatories, except it be in very special cases, by express order of the court, to sift out some fraud or practice pregnantly appearing to the court, or otherwise upon offer of the plaintiff to be concluded by the answer of the defendant without any liberty to disprove such answer, or to impeach him after of perjury.

71. Decrees in other courts may be read upon hearing without the warrant of any special order: but no depositions taken in any other court are to be read but by special order; and regularly the court granteth no order for reading of depositions, except it be between the same parties, and upon the same title and cause of suit.

72. No examination is to be had of the credit of any witness but by special order, which is sparingly to be granted.

73. Witnesses shall not be examined *in perpetuam rei memoriam*, except it be upon the ground of a bill first put in, and answer thereunto made, and the defendant or his attorney made acquainted with the names of the witnesses that the plaintiff would have examined, and so publication to be of such witnesses; with this restraint nevertheless, that no benefit shall be

taken of the depositions of such witnesses in cas
may be brought *viva voce* upon the trial, but only
used in case of death before the trial, or age, or
tency, or absence out of the realm at the trial.

Ad informandam conscientiam judicis.

74. No witnesses shall be examined
publication, except it be by consent,
special order, *ad informandam conscientiam judic*
then to be brought close sealed up to the co
peruse or publish, as the court shall think good

Affidavits.

75. No affidavit shall be taken or ad
by any master of the chancery tending to the pr
disproof of the title or matter in question, or to
the merits of the cause; neither shall any such
be colourably inserted in any affidavit for serv
process.

76. No affidavit shall be taken against affid
far as the masters of the chancery can have
edge; and if any such be taken, the latter a
shall not be used nor read in court.

77. In case of contempts grounded upon forc
words upon serving of process, or upon words o
dal of the court, proved by affidavit, the party is
with to stand committed; but for other con
against the orders or decrees of the court, an
ment goes forth, first, upon an affidavit made, an
the party is to be examined upon interrogatori
his examination referred; and if upon his exam
he confess matter of contempt, he is to be comm
if not, the adverse party may examine witne
prove the contempt: and thereupon[1] if the co

[1] I have substituted this for "therefore."

appear, the party is to be committed; but if not, or if the party that pursues the contempt do fail in putting in interrogatories, or other prosecution, or fail in the proof of the contempt, then the party charged with the contempt is to be discharged with good costs.

78. They that are in contempt, specially so far as proclamation of rebellion, are not to be heard, neither in that suit, nor any other, except the court of special grace suspend the contempt.

79. Imprisonment upon contempt for matters past may be discharged of grace, after sufficient punishment, or otherwise dispensed with: but if the imprisonment be for not performance of any order of the court in force, they ought not to be discharged except they first obey, but the contempt may be suspended for a time.

Petitions.

80. Injunctions, sequestrations, dismissions, retainers upon dismissions, or final orders, are not to be granted upon petitions.

81. No former order made in court is to be altered, crossed, or explained upon any petition; but such orders may be stayed upon petition for a small stay, until the matter may be moved in court.

82. No commission for examination of witnesses shall be discharged, nor no examinations or depositions shall be suppressed upon petition, except it be upon point of course of the court first referred to the clerks, and certificate thereupon.

83. No demurrer shall be overruled upon petition.

84. No *scire facias* shall be awarded upon recognisances not enrolled, nor upon recognisances enrolled, unless it be upon examination of the record with the writ; nor no recognisance shall be enrolled after the

year, except it be upon special order from the lord chancellor.

85. No writ of *ne exeat regnum*, prohibition, consultation, statute of Northampton, *certiorari* special, or *procedendo* special, or *certiorari* or *procedendo* general more than one in the same cause, *habeas corpus*, or *corpus cum causa*, *vi laica removend'*, or restitution thereupon, *de coronatore et viridario eligendo* in case of amoving, *de homine replegiando*, assize on[1] special patent, *de ballivo amovend'*, *certiorari super præsentationibus fact. coram commissariis sewar'*, or *ad quod dampnum*, shall pass without warrant under the lord chancellor's hand, and signed by him, save such writs *ad quod dampnum* as shall be signed by master attorney.

86. Writs of privilege are to be reduced to a better rule, both for the number of persons that shall be privileged, and for the case of the privilege: and as for the number, it shall be set down by schedule: for the case, it is to be understood that besides persons privileged as attendants upon the court, suitors and witnesses are only to have privilege *eundo*, *redeundo*, *et morando*, for their necessary attendance, and not otherwise; and that such writ of privilege dischargeth only an arrest upon the first process; but yet, where at such times of necessary attendance the party is taken in execution, it is a contempt to the court, and accordingly to be punished.

87. No *supplicavit* for the good behaviour shall be granted, but upon articles grounded upon the oath of two at the least, or certificate of any one justice of as-

[1] I have substituted "on" for "or." The thing meant seems to be a special patent to justices not being justices of assize for the county. See Fitz. N.B. 177. J. K.

size, or two justices of the peace, with affidavit that it is their hands, or by order of the star-chamber, or chancery, or other of the king's courts.

88. No recognisance of the good behaviour, or the peace, taken in the country, and certified into the petty-bag, shall be filed in the year without warrant from the lord chancellor.

89. Writs of *ne exeat regnum* are properly to be granted according to the suggestion of the writ, in respect of attempts prejudicial to the king and state, in which case the lord chancellor will grant them upon prayer of any the principal secretaries without cause shewing, or upon such information as his lordship shall think of weight: but otherwise also they may be granted, according to the practice of long time used, in case of interlopers in trade, great bankrupts in whose estate many subjects are interested, or other cases that concern multitudes of the king's subjects, also in case of duels, and divers others.

90. All writs, certificates, and whatsoever other process returnable *coram Rege in Canc.* shall be brought into the chapel of the rolls, within convenient time after the return thereof, and shall be there filed upon their proper files and bundles as they ought to be; except the depositions of witnesses, which may remain with any of the six clerks by the space of one year next after the cause shall be determined by decree or otherwise be dismissed.

91. All injunctions shall be enrolled, or the transcript filed; to the end that if occasion be, the court may take order to award writs of *scire facias* thereupon, as in ancient time hath been used.

92. All days given by the court to sheriffs to return

their writs, or bring in their prisoners upon writs of privilege, or otherwise between party and party, shall be filed, either in the register's office, or in the petty-bag respectively; and all recognisances taken to the king's use, or unto the court, shall be duly inrolled in convenient time with the clerks of the inrollment, and calendars made of them, and the calendars every Michaelmas term to be presented to the lord chancellor.

93. In case of suits upon the commission for charitable uses, to avoid charge, there shall need no bill, but only exceptions to the decree, and answer forthwith to be made thereunto; and thereupon, and upon sight of the inquisition, and the decree brought unto the lord chancellor by the clerk of the petty-bag, his lordship, upon perusal thereof, will give order under his hand for an absolute decree to be drawn up.

94. Upon suit for the commission of sewers, the names of those that are desired to be commissioners are to be presented to the lord chancellor in writing; then his lordship will send the names of some privy counsellor, lieutenant of the shire, or justices of assize, being resident in the parts for which the commission is prayed, to consider of them, that they be not put in for private respects; and upon the return of such opinion, his lordship will give farther order for the commission to pass.

95. No new commission of sewers shall be granted while the first is in force, except it be upon discovery of abuse or fault in the first commissioners, or otherwise upon some great and weighty ground.

96. No commission of bankrupt shall be granted but upon petition first exhibited to the lord chancel-

lor, together with names presented, of which his lordship will take consideration, and always mingle some learned in the law with the rest; yet so as care be taken that the same parties be not too often used in commissions; and likewise care is to be taken that bond with good surety be entered into, in 200*l.* at least, to prove him a bankrupt.

97. No commission of delegates in any cause of weight shall be awarded, but upon petition preferred to the lord chancellor, who will name the commissioners himself, to the end they may be persons of convenient quality, having regard to the weight of the cause, and the dignity of the court from whence the appeal is.

98. Any man shall be admitted to defend *in forma pauperis* upon oath; but for plaintiffs, they are ordinarily to be referred to the court of requests, or to the provincial councils, if the case arise in those jurisdictions, or to some gentlemen in the country, except it be in some special cases of commiseration, or potency of the adverse party.

99. Licences to collect for losses by fire or water are not to be granted, but upon good certificate; and not for decays by suretyship or debt, or any other casualties whatsoever; and they are rarely to be renewed; and they are to be directed ever unto the county where the loss did arise, if it were by fire, and the counties that abut upon it, as the case shall require; and if it were by sea, then unto the county where the port is from whence the ship went, and to some sea-counties adjoining.

100. No exemplifications shall be made of letters patents, *inter alia*, with omission of the general words;

nor of records made void or cancelled; nor of
crees of this court not inrolled; nor of deposi
parcel and fractions, omitting the residue of th
sitions; nor of depositions in court, to which t
of the examiner is not subscribed; nor of re
the court not being inrolled or filed; nor
ords of any other court, before the same be d
tified to this court, and orderly filed here; no
records upon the sight and examination of a
in paper, but upon sight and examination
original.

101. And because time and experience n
cover some of these rules to be inconvenie
some other to be fit to be added; therefore h
ship intendeth in any such case from time to
publish any such revocations or additions.

APPENDIX.

In 1641 there was published a small volume in 21 chapters, with the title *Cases of Treason, written by Sir Francis Bacon, H. M.'s Solicitor-General.* The same matter, with very slight variation and with differing titles, is to be found in Harl. MSS. No. 6797, Sloane MSS. No. 4263, and Lansd. MSS. No. 612, all of them assigning 1608 as the date of the composition.

The first part of the collection is in substance the same as the *Preparation for the Union of Laws*, omitting the preface; the main difference being the compression here and there of several clauses in the *Preparation* into one: — for instance, comprising in the first paragraph the death of the king, the king's wife, and the king's eldest son; or, as another copy has it more concisely, the king, his wife, or eldest son. If the collection had been in existence (whether Bacon's or another's) before it was used for the special purpose of the Union, the separation of such a paragraph into its elements would be natural for the purpose of collation with Scotch law.

The five paragraphs forming the first fragment in this appendix immediately follow the *Cases of Heresy*. They may well (if genuine) have been intended for insertion in the third part of the *Preparation*.

Some copies incorporate with this text what oth-

ers make part of a synopsis — comprehending what has already been printed at p. 346., and other matter quite beside any of the subjects of this collection. As I think this must be the true origin of the paragraphs in question, I have printed them in this form.

The *Answers to the Questions of Sir A. Hay*, follow: and then the other matter lastly here printed.

On this last portion Archbishop Sancroft notes, "Written, some say, by Sir John Doderidge." On referring to Doderidge's *History of the Principality of Wales* (which, though the earliest printed edition in the Brit. Mus. is of 1631, appears to have been written when Lord Buckhurst was Treasurer, and Lord Zouch President of the Welsh Council, and was therefore probably accessible to Bacon and others in 1608), I find that the greater part of the matter is to be found there with such differences as to make it specially applicable to Wales. Bacon, or whoever the compiler may be, must have thought it a handy summary, and so have adopted and adapted it. I think it probable the greater part of the collection might in like manner be traced to other hands, Lambard, &c., if it were worth while to make the search.

CASES OF THE KING'S PREROGATIVE.

The king's prerogative in parliament.

1. The king hath an absolute negative voice to all bills that pass the parliament, so as without his royal assent they have a mere nullity, and not so much as

authoritas præscripta, as *senatus consulta* had notwithstanding the intercession of tribunes.

2. The king may summon parliaments, dissolve them, adjourn and prorogue them at his pleasure.

3. The king may add voices in parliament at his pleasure, for he may give privileges to borough towns, and call and create barons at his pleasure.

4. No man can sit in parliament unless he take the oath of allegiance.

The king's prerogative in war and peace.

1. The king hath power to declare and proclaim war, and make and conclude peace.

2. The king hath power to make leagues and confederacies with foreign estates, more or less strait, and to revoke and disannul them at his pleasure.

3. The king hath power to command the bodies of his subjects for service of his wars, and to muster, train, and levy men, and to transport them by sea or land at his pleasure.

4. The king hath power in time of war to execute martial law, and to appoint all officers of war at his pleasure.

5. The king hath power to grant his letters of mart and reprisal for remedy to his subjects upon foreign wrongs.

6. The king may give knighthood, and thereby enable any subject to perform knight's service.

The king's prerogative in matter of money.

1. The king may alter his standard in baseness or fineness.

2. The king may alter his stamp in the form of it.

3. The king may at his pleasure alter the valua and raise and fall moneys.

4. The king may by proclamation make mon his own current or not.

5. The king may take or refuse the subjects' b or coin for more or less money.

6. The king by proclamation may make fc money current, or not.

The king's prerogative in matters of trade and tr

1. The king may constrain the person of any subjects not to go out of the realm.

2. The king may restrain any of his subjects out of the realm in any special part foreign.

3. The king may forbid the exportation of any modities out of the realm.

4. The king may forbid the importation of any modities into the realm.

5. The king may set a reasonable impost upo foreign wares that come into the realm, and so tive wares that go out of the realm.

The king's prerogative in the persons of his sub

1. The king may create any corporation or politic, and enable them to purchase, to grant, t and be sued; and with such restrictions and limit as he pleases.

2. The king may denizen and enable any for for him and his descendants after the charter; t he cannot naturalize, nor enable him to make pe from ancestors paramount.

3. The king may enable any attainted person charter of pardon, and purge the blood for ti

come, though he cannot restore the blood for the time past.

4. The king may enable any dead persons in the law, as men professed in religion, to take and purchase to the king's benefit.

- A twofold power of the law
  - 1. Direction — In this respect the king is underneath the law, because his acts are guided thereby.
  - 2. Correction — In this respect the king is above the law, for it may not correct him for any offence.
- A twofold power in the king
  - 1. His absolute power, whereby he may levy forces against any nation.
  - 2. His limited power, which is declared and expressed in the laws, what he may do.

Of the jurisdiction of Justices itinerant in the principality of Wales.

1. They have power to hear and determine all criminal causes, which are called, in the laws of England, pleas of the crown; and herein they have the same jurisdiction that the justices have in the court of the king's bench.

2. They have power to hear and determine all civil causes, which in the laws of England are called common pleas, and to take knowledge of all fines levied of lands or hereditaments, without suing any *dedimus potestatem;* and herein they have the same jurisdiction that the justices of the common pleas do execute at Westminster.

3. They have power also to hear and determine all assizes upon disseisin of lands or hereditaments, wherein they equal the jurisdiction of the justices of assize.

4. Justices of *oyer* and *terminer* therein may hear all notable violences and outrages perpetrated within their several precincts in the said principality of Wales.

These offices are in the king's gift.

The prothonotary's office is to draw all pleadings, and to enter and ingross all records and judgments in civil causes.

The clerk of the crown his office is to draw and ingross all proceedings, arraignments, and judgments in criminal causes.

These offices are in the judges' disposition.

The marshal's office is to attend the persons of the judges at their coming, sitting, and going from their sessions or court.

The crier is *tanquam publicus præco*, to call for such persons whose appearances are necessary, and to impose silence to the people.

The office of justice of peace.

There is a commission under the great seal of England to certain gentlemen, giving them power to preserve the peace, and to resist and punish all turbulent persons, whose misdemeanors may tend to the disquiet of the people; and these be called justices of the peace, and every of them may well and truly be called *Eirenarcha.*

The chief of them is called *Custos rotulorum*, in whose custody all the records of their proceedings are resident.

Others there are of that number called justices of peace and *quorum*, because in their commission they have power to sit and determine causes concerning

breach of peace and misbehaviour; the words of their commission are conceived thus, *Quorum*, such and such, *unum vel duos, etc. esse volumus;* and without some one or more of the *quorum*, no sessions can be holden; and for the avoiding of a superfluous number of such justices, (for through the ambition of many it is counted a credit to be burthened with that authority,) the statute of 38 H. VIII. hath expressly prohibited that there shall be but eight justices of the peace in every county. These justices hold their sessions quarterly.

Justices of peace appointed by the lord keeper.

In every shire where the commission of the peace is established, there is a clerk of the peace for the entering and ingrossing of all proceedings before the said justices. And this officer is appointed by the *custos rotulorum*.

The office of sheriffs.

Every shire hath a sheriff, which word, being of the Saxon English, is as much as to say shire-reeve, or minister of the county: his function or office is twofold, namely,

1. Ministerial.
2. Judicial.

1. He is the minister and executioner of all the process and precepts of the courts of law, and therefore ought to make return and certificate.

2. The sheriff hath authority to hold two several courts of distinct natures: 1. The *turn*, because he keepeth his turn and circuit about the shire, and holdeth the same court in several places, wherein he doth inquire of all offences perpetrated against the common law, and not forbidden by any statute or act

of parliament; and the jurisdiction of this court is derived from justice distributive, and is for criminal offences, and held twice every year.

2. The *County Court*, wherein he doth determine all petty and small causes civil under the value of forty shillings, arising from the said county; and therefore it is called the county court.

The jurisdiction of this court is derived from justice commutative, and is held every month. The office of the sheriff is annual, and in the king's gift, whereof he is to have a patent.

The office of escheator.

Every shire hath an officer called an escheator, which is an office to attend the king's revenue and to seize into his majesty's hands all lands escheated, and goods or lands forfeited, and therefore is called escheator; and he is to inquire by good inquest of the death of the king's tenant, and to whom the lands are descended, and to seize their bodies and lands for ward if they be within age, and is accountable for the same: he is named by the lord treasurer of England.

The office of coroner.

Two other officers there are in every county called coroners; and by their office they are to enquire by good inquest in what manner, and by whom every person dying of a violent death came so to their death; and to enter the same of record; which is matter criminal, and a plea of the crown: and therefore they are called coroners, or crowners, as one hath written, because their inquiry ought to be *in corona populi.*

These officers are chosen by the freeholders of the

shire, by virtue of a writ out of the chancery *de coronatore eligendo:* and of them I need not to write more, because these officers are in use elsewhere.

General observations touching constables, gaolers, and bailiffs.

Forasmuch as every shire is divided into hundreds, there are also by the statute of 34 H. VIII. cap. 26. ordered and appointed, that two sufficient gentlemen or yeomen shall be appointed constables of every hundred.

Also there is in every shire a gaol or prison appointed for the restraint of liberty of such persons as for their offences are thereunto committed, until they shall be delivered by course of law.

In every hundred of every shire the sheriff thereof shall nominate sufficient persons to be bailiffs of that hundred, and under-ministers of the sheriffs: and they are to attend upon the justices in every of their courts and sessions.

NOTE.

Vol. xiv. pages 188 and 251. The origin of the bad grammar in Reg. 19, which I only observed while correcting the press, is to be found in the ninth line of p. 301 of that volume, where we have *iisdem modis quibus, &c.*

INDEX

TO THE

LITERARY AND PROFESSIONAL WORKS.

Note.—The parts of the Index printed in Italic refer to the Editors' Prefaces and Notes.

A.

Abator, xiv. 394.
Abduction made a capital offence by statute of Henry VII. xi. 132.
Abergavenny, Lord, *fined by Henry VII. for keeping retainers*, xi. 328.
imprisoned for a short time, xi. 330.
firm to Henry VII. against the Cornish rebels, xi. 266.
Abingdon, Abbot of, sent as commissioner by Henry VII. to Charles VIII. xi. 110.
Abjuration and Exile, offences of, xv. 333, 334.
Academia nova modum prorsùs excessit, xiii. 47.
Accessories, xiv. 220, 222, 237, 245.
Achaians compared by Titus Quintius to a tortoise, xiii. 238.
Achelous, his fight with Hercules, interpretation of the fable, xiii. 136–138.
interpretatio fabulæ, xiii. 35, 36.
Act of God, xiv. 215.
Actæon, or curiosity, the fable interpreted, xiii. 108, 109.
interpretatio fabulæ, xiii. 10, 11.
Action in oratory, saying of Demosthenes respecting, xii. 116.
Actium, battle of, xii. 186.
Actus inceptus, cujus perfectio pendet ex voluntate partium, revocari potest, xiv. 256, 257.
si autem ex voluntate tertiæ personæ, vel ex contingenti,
Actus inceptus. — *continued.*
revocari non potest, xiv. 257, 258.
Aculeate words, xii. 272.
Administration, letters of, xiv. 429, 432.
Adrian the Emperor, his envy of poets and artists, xii. 105.
Adrian VI., Pope, xi. 140.
Adrian de Castello, the Pope's ambassador to Scotland, xi. 139.
honoured and employed by Henry VII. *ib.*
Adrian's case, xv. 213.
Adultery, man taken in, saying of one of the Romans respecting, xiii. 372.
Advancement *of Fortune*, xi. 22.
Advancement of Learning, the, a key to the opening the Instauration, xiii. 186, 187.
Adversity, essay on, xii. 93.
the blessing of the New Testament, *ib.*
its virtue fortitude, *ib.*
best discovers virtue, *ib.*
Advertisement touching an Holy War, xiii. 191–218.
Advocates, behaviour of Judges towards, xii. 267, 371.
Advowson, xiv. 229, 235, 236.
in gross, xiv. 190.
Ægyptian, on the recent origin of Greece, xiii. 375. — *See* Egypt.
Æneas Sylvius, of the donation of Constantine the Great to Sylvester, xiii. 372.

Æneas Sylvius. — *continued.*
of the Christian religion, xiii. 379.
Æneid, *extracts by Bacon*, xiv. 15–27.
Ænigmata Sphingis, xiii. 55–57.
Æschines, retort of Demosthenes on, xiii. 353.
Æsculapius, wrath of Jupiter kindled against, xiii. 87.
a Cyclopibus interemptus, xii. 437.
Æsop, fable of the damsel turned into a cat, xii. 212.
of the fly on the chariot wheel, xii. 260, 374.
of the two frogs, xiii. 274.
of the fox and the cat, xiii. 278, 279.
of the man who called for Death, xiii. 280.
Æstimatio præteriti delicti ex post facto nunquam crescit, xiv. 221, 222.
Affidavits in Chancery, xv. 366, 367.
Affinitatis vincla, sacramenta naturæ, xii. 440. — *Vide* Jura.
Agathocles to his Syracusan captives, xiii. 355.
Age and youth, essay on, xii. 222–225, 351, 352.
characteristics of, xii. 235, *et seq.*
Agent and principal, xiv. 245.
Agent-court, battle of, xi. 180.
Agesilaus, his conquests in Asia, xiii. 235.
of one who counterfeited a nightingale, xiii. 357.
Agrippa raised by Augustus, xii. 168.
de vanitate, xiii. 302.
Ailmer, Sir Lawrence, Mayor of London, fined 1000*l.* by Henry VII. xi. 352.
Albert Durer, would make a personage by geometrical proportion, xii. 226, 353.
Alchemy has no ground in theory, and no good pledge of success in practice, xiii. 167.
Alcibiades to Pericles, xiii. 337, 338.
Alderman never welcomes Death as a friend, xii. 397.
Alderwasley, Manor of, xv. 62.
Alexander the Great, his Persian conquests, xiii. 236.
his saying, of Craterus and Hephæstion, xiii. 350.
that Antipater was all purple within, xiii. 351.
Alexander the Great. — *continued.*
to Parmenio, xiii. 354.
knew himself mortal by two things, sleep and lust, *ib.*
when asked to run at the Olympian games, xiii. 363.
for his own reward, kept Hope, *ib.*
his visit to Diogenes, xiii. 384.
Alexander VI., Pope, sends a nuncio to reconcile Henry VII. and Charles VIII. xi. 171.
his saying of the Frenchmen in Italy, xi. 238.
attempts to organise a crusade, xi. 313.
applies to Henry VII. *ib.*
respecting Cæsar Borgia, xiii. 331.
Alien, Littleton's definition, xv. 227.
made a denizen, to pay strangers' customs, by statute of Henry VII. xi. 63.
enfeoffed to uses, xiv. 342.
enemy, xv. 202.
friend, xv. 203.
tradesmen within the realm, xv. 210.
Alienation, the license of, made a patent office, xv. 275.
Allegiance, false opinion concerning, xv. 206, 207, 210, 220.
applies to the person of the king, not to the law or kingdom, xv. 227.
of greater extent than laws, xv. 228.
continueth after laws, xv. 229.
and while laws are suspended, *ib.*
Alleys in gardens, xii. 239–241.
Allez à Dieu, xv. 305, 308.
Almaigne, its dismemberment, xii. 278.
Almains, under Martin Swart, aid the Irish rebels against Henry VII. xi. 84.
Alonzo of Arragon, his praise of age, xiii. 350.
why a great necromancer, xiii. 351.
Alphonso, Duke of Calabria, receives the Order of the Garter from Henry VII. xi. 199.
Amalthea, xiii. 36, 137.
Amason, secretary of Ferdinando of Spain, xi. 341.
Amazons, an unnatural government, xiii. 214.

Ambages of God, xiv. 49.
Ambassadors sent by Henry VII. to Charles VIII. xi. 126.
excused of practices against the state where they reside, xiv. 214, 215.
Ambiguitas verborum, latens, verificatione suppletur, xiv. 273–276.
latens et patens, *ib.*
Ambiguity in pleading,
of words, xiv. 205.
that grows by reference, *ib.*
in construction,
patent, xiv. 274.
latent, xiv. 273–276.
Ambition, essay on, xii. 206–209, 349–351.
like choler, makes or mars, xii. 206, 349.
how ambitious men should be made serviceable, xii. 207, 350.
how to be curbed, *ib.*
Ameled, xiv. 31.
America, discovered by Columbus, xi. 293.
foretold by Seneca, xii. 203–206.
by Plato, xii. 206.
results of its discovery, xiii. 196.
Amor. — *Vide* Cupido, Love.
Amortised, a part of the lands, xi. 144.
Anabaptists and other furies, xii. 91, 315.
of Munster, xiii. 214.
Anacharsis, of the Athenians, xiii. 377.
Analogia Cæsaris, xiv. 28–31.
Anaxagoras, when condemned to death by the Athenians, xiii. 363.
Ancient demesne, xiv. 401.
Andes, far higher than our mountains, xii. 274.
Andrews, Bishop, epistle dedicatory addressed to, xiii. 183–189.
on a sermon without divinity, xiii. 378.
on the conversion of the Bishop of Spalato, *ib.*
Angels not to be introduced in antimasques, xii. 210.
Angeovines, faction in Naples, xi. 238.
Anger, essay on, xii. 271–274.
to calm the natural inclination, xii. 271, 272.
Anger. — *continued.*
to repress the motions of, xii. 272, 273.
to raise and appease in others, xii. 273
a kind of baseness, xii. 271.
its causes chiefly three, xii. 272.
Ann Bullen, her speech at her execution, xiii. 330.
Anne of Brittaine, xi. 54. *See* Brittaine.
Annuity granted pro consilio impendendo, when not forfeited, xiv. 189.
Ant, a wise creature for itself, xii. 158, 341.
Antalcidas, of Spartan ignorance, xiii. 363.
Antecamera, xii. 344.
Antigonus, Then we shall fight in the shade, xiii. 355.
to Demetrius, when the fever left him, xiii. 362.
overhearing evil of himself, xiii. 363, 364.
Anti-masques should be short, xii. 210.
angels not to be introduced, *ib.*
Antipater to Demades, xiii. 353.
Antiperistasis, xiii. 281.
Antisthenes, saying of, on necessary learning, xiii. 378.
Antitheta, xiv. 32.
Antonius, Marcus, only two great men of history carried away by love, he one, xii. 110.
Antwerp, English merchants return to, after the treaty made by Henry VII. xi. 260.
Ape, his deformity increased by his likeness to man, xii. 137, 341.
Apelles would take the best parts of divers faces, xii. 226, 353.
Aphorisms, why preferable to a digested method of delivering knowledge, xiv. 182.
Apollo, slayer of the Cyclopes, xiii. 87.
his musical contest with Pan, meaning of the fable, xiii. 100.
sagittis Cyclopes confecit, xii. 437.
certamen ejus cum Pane, xii. 448.
Apollonius, derided by Vespasian, xiii. 339.
his answer to Vespasian concerning Nero's fall, xii. 141, 328; xiii. 339, 340, 399.

Apomaxis calumniarum, *by Sir R. Morysine*, xi. 322.
Apophthegms, new and old, xiii. 328–387.
Preface, xiii. 313–324.
from the Resuscitatio, xiii. 388–398.
from the Baconiana, xiii. 399–405.
from Dr. Rawley's Commonplace Book, xiii. 406–414.
spurious, xiii. 415–418.
mucrones verborum, xiii. 313.
Apostolical succession, xiv. 56.
Appeal, of murder, xiv. 237, 373.
grounds of, xiv. 246–249.
of Mayhem, xiv. 247, 248, 393.
Appius Claudius, only two men great in history carried away by love, he one, xii. 110.
Apples, golden, of Atalanta, xiii. 143.
Apposed, xii. 155.
Arbela, battle of, xii. 178.
Arbitrium solutum, xiv. 217.
Archers, English, their execution upon the French troops, xi. 127.
Cornish, their arrows reputed to be of the length of a tailor's yard, xi. 273.
Archery, of Cupid, signifies what, xiii. 125.
Archidamus to Philip after Chæronea, xiii. 368.
Arden *v.* Darcey, case of, xv. 262, 302.
Argument with an emperor who owned thirty legions, xiii. 361.
Arguments of property are three, damages, seisure, and grant, xv. 44.
of law, by Lord Bacon, xiv. 156.
dedication of, xv. 29.
in the case of impeachment of waste, xv. 35–61.
in Lowe's case of tenures, xv. 62–77.
in the case of revocation of uses, xv. 78–91.
on the jurisdiction of the marches, xv. 119–154.
Preface to, xv. 95–118.
in Chudleigh's case, xv. 159–187.
Preface to, xv. 157, 158.
in case of Postnati, xv. 193–247.
Preface to, xv. 191, 192.
in the case De rege inconsulto, xv. 257–311.
Arguments — *continued.*
Preface to, xv. 251–256.
Ariadne, loved by Bacchus, xiii. 39, 141.
Aristander, his explanation of Philip's dream, xii. 203.
Aristippus, to one who reproved him for falling at Dionysius' feet, xiii. 348.
why men give to the poor rather than to philosophers, xiii. 350.
when reproved for luxury, xiii. 366.
likened those, who cultivated the sciences and neglected philosophy, to Penelope's suitors, xiii. 368.
to a sailor who taunted him with fear, xiii. 381.
when asked what Socrates had done for him, *ib.*
why he took money of his friends, *ib.*
to a strumpet with child, *ib.*
Aristotle, *his theory of usurpation*, xi. 21.
Empedocles and Democritus rather to be approved, xiii. 150.
no ill interpreter of the Law of Nature respecting conquest, xiii. 208.
we are beholden to him for sundry articles of the Christian faith, xiii. 385.
Aristoteles, philosophia ejus minùs probanda quàm Empedoclis aut Democriti, xiii. 47.
Armada, Spanish, defeat of, xi. 430, 449.
invincible and invisible, xii. 60.
Arms flourish in the youth of a state, xii. 280.
Arrows of the Cornishmen, xi. 273.
Art represented under the person of Vulcan, xiii. 132.
contest of, with nature, shown in the story of Atalanta, xiii. 143.
Artes mechanicæ faciunt et nocumentum et remedium, xiii. 30.
Arthur, Prince, son of Henry VII. xii. 277.
dies soon after his marriage with Katharine, daughter of Ferdinand and Isabella, xii. 305, 321.
his saying the morning after his wedding, xii. 321.

Artifices excellentes maximè invidiosi, xiii. 29.
artifici præstanti exilium vix supplicii locum tenet, *ib.*
Artists, envy one of their predominant vices, xiii. 130.
Arundel, Earl of, sent by Henry VII. to welcome Philip King of Castile, at Weymouth, xi. 343.
correction by Bacon in the account of his trial in Camden's Annals of Queen Elizabeth, xii. 50.
his statues at Highgate, xiii. 403.
Asellus donum Deorum pro potu paciscitur, xiii. 42.
videtur esse Experientia, xiii. 48.
Ashburnham, Lord, *Reading on Stat. Westminster 2nd, c. 5, by Bacon, in the Stowe Collection*, xiv. 161.
Ashes more generative than dust, xii. 163, 335.
Ass, gift of the gods laid on the back of, xiii. 144, 145, 151.
signifies experience, xiii. 151.
Assassins of the Levant, xiii. 213.
Assize, commission of, xiv. 392.
Astley, a scrivener, one of Perkin Warbeck's councillors, xi. 283.
Astrologer, xii. 273.
Astwood, Thomas, tried for Perkin Warbeck's rebellion, and pardoned, xi. 223.
plots Perkin Warbeck's escape from the Tower, xi. 302, 304.
Atalanta, meaning of the fable, xiii. 142–144.
interpretatio fabulæ, xiii. 40, 41.
Atheism, essay on, xii. 131–135, 337–340.
causes of, xii. 133, 340.
better than superstition, xii. 135, 340.
Atheismus, meditatio de, xiv. 76.
Atheist, miracles never wrought to convince, why, xii. 132.
the fool hath said in his heart, There is no God, xiv. 92.
Athens, where wise men propose and fools dispose, xiii. 377.
Atlantis, whether destroyed by earthquake or deluge, xii. 274.
Atom, typified by the fable of Cupid, xiii. 122.
the sidelong motion of, xiv. 95.
Atomus sive Cupido, interpretatio fabulæ, xiii. 22.
opinio Peripateticorum, xiii. 24.
Atomus — *continued.*
Democriti, xiii. 24.
Epicuri, *ib.*
declinatio ejus, xiv. 79.
Aton Castle, taken by the Earl of Surrey from James IV., xi. 276.
Attainder, xiv. 194, 195, 234, 235, 237, 341.
what shall give the escheat to the lord, xiv. 405–409.
of the partizans of the House of York, xi. 57.
Audley, Lord, heads the Cornish rebels against Henry VII. xi. 266.
beheaded at Tower Hill, xi. 273, 274.
Augustus Cæsar. — *See* Cæsar, Augustus.
Aurora, in love with Tithonus, xiii. 120.
Tithonum adamat, xiii. 20.
Aurum, durationis tessera, xiii. 61.
Authority, four vices of men in, xii. 114, 326.
that of the adversary himself is the strongest of all, xv. 219.
Autumn of life, xiii. 358.
Autumnus pulchrorum pulcher, xii. 226, 353.
Avarice doth ever find in itself matter of ambition, xi. 336.
of Henry VII. xi. 234, 263, 324, 336, 351, 352.
Aviaries in gardens not commended, xii. 245, 246.
Azo, his definition of a trust, xiv. 291.

B.

Babylon, excellence of its geographical position, xiii. 254.
Bacchus, his history an allegory, xiii. 138–142.
represents passion or desire, xiii. 139.
birth and nurture, *ib.*
invention of the vine, xiii. 140.
a conqueror, *ib.*
lover of Ariadne, xiii. 141.
ivy, why sacred to, *ib.*
why confounded with Jupiter, xiii. 142.
interpretation of the fable of Bacchus and Pentheus, xiii. 108.
Jovis natus, xiii. 36.

Bacchus, — *continued.*
a Proserpinâ nutritus, xiii. 37.
desiderium boni apparentis significat, *ib.*
interpretatio fabulæ Bacchi et Penthei, xiii. 10, 11.
Bacon, Lord, *charge against him, of colouring his history of Henry VII. to flatter James I.* xi. 21–32.
his jest to the queen concerning Dr. Hayward's felony, xiii. 341.
his advice to the queen, hesitating whom to appoint, xiii. 343.
to the fishermen who refused to sell him the draught, xiii. 391.
to a lady in Gray's Inn Gardens, xiii. 391, 392.
to Lord Exeter, xiii. 392.
to Sir Edward Cooke, *ib.*
to Queen Elizabeth, *ib.*
on the building Verulam House, by the pond-yard, xiii. 393.
when the exchequer was empty, *ib.*
sayings and anecdotes of, xiii. 403–405, 407, 409, 411, 412.
of his own disgrace, xiii. 407.
his industry in small matters, xiv. 19.
his confession of faith, xiv. 41–57.
his talent as a poet, xiv. 112–116.
reader at Gray's Inn, xiv. 159–161.
affection for Gray's Inn, xv. 30.
Bacon, Mr. Anthony, anecdote of his man Prentise, xiii. 413.
Bacon, Sir Nicholas, to Queen Elizabeth, of the size of his house, xiii. 357.
to Lord Leicester, xiii. 390, 391.
to a nimble-witted counsellor, xiii. 395.
on a difficulty in setting forth lands, *ib.*
stopped at heaven's gate on account of an unjust decree, *ib.*
to his barber, xiii. 412.
Baconiana, *publication of, by Dr. Tenison*, xiii. 317.
apophthegms from, xiii. 399–405.
Bailee, felony by, xiv. 222.
Banks, cunning propositions of, xii. 219.
Bannerets created by Henry VII. upon the field, at Blackheath, xi. 273.
Bannocksbourn by Strivelin, battle of, xi. 138.
Banyan, man's life compared to, xii. 397.
Bar, good to a common intent, xiv. 207.
Baragan, xiv. 31.
Barba Panis, radii corporum cælestium, xii. 444.
Barbarous nations, their inundations on other nations, xii. 279.
Bargains, gains by, are of a doubtful nature, xii. 200.
bargains and sales, xiv. 418, 419.
Barkhamsted, Cecile Duchess of York dies at, xi. 239.
Barley, William, joins Perkin Warbeck in Flanders, xi. 212.
makes his peace with the king, xi. 231.
pardoned by Henry VII. xi. 231.
Barnaby's Day, the longest in the year, xiii. 353.
Barnesey, Prior of, his case, xv. 285.
Baron and feme, xiv. 191, 193, 208, 209, 214, 216, 220, 224, 225, 247, 341, 342, 344, 350, 351.
Barriers and Tourneys, xii. 210.
Bartholomew's Day, "No, by St. Bartholomew, Madame," xiii. 346.
Bartholomew's, St., charter of Henry II. to the prior and monks of, xv. 12.
Barton, Elizabeth, the words on which she was condemned of treason, xi. 228.
Bashfulness, a great hindrance to a man, xiii. 310.
Bastards, envious, xii. 104.
Diogenes to one throwing stones, xiii. 385.
Bastardy, trial of by the bishop, xiv. 248.
Baths, saying of the bishop, who bathed twice a-day, xiii. 337.
Beard of Pan, why long, xiii. 96.
Zelim shaved, why, xiii. 375, 376.
Beauty, essay on, xii. 225–227, 352, 353.
its relation to virtue, xii. 225, 352.
of favour is more than of colour, and of gracious motion more than of favour, xii. 226, 352.
the best part of, cannot be expressed by a picture, *ib.*

Beauty — *continued.*
is as summer fruits, xii. 226, 352.
Beck, as good as a Dieu vous garde, xiv. 26.
Bedingfield's case, xv. 298
Bedford, Jasper, Earl of, one of Henry VII.'s generals, xi. 86, 194.
his death, xi. 271.
Bees, hive likened to a commonwealth, xiii. 399.
Behaviour, good, like perpetual letters commendatory, xii. 257.
of some men is like a measured verse, xii. 257, 294, 361.
Belgic lion held by the ears, xiii. 404.
Bella, fabula Persei bella significat, xii. 449–453.
præcepta tria de bello gerendo, xii. 450.
Belly, rebellions of the, are the worst, xii. 126.
Benedictions, xiv. 35.
Benevolences, history of the tax, xi. 183.
act to make arrears leviable by course of law, xi. 241.
Berkley, Lord, case of, xv. 232.
Bermondsey, Queen Dowager cloistered at, xi. 73.
Bernard, St., on scandal of priests, xii. 134.
Besom-seller at Buxton, xiii. 405.
Bettenham, Mr., riches, like muck, require spreading, xiii. 380.
virtuous men, like spices, are best when crushed, *ib.*
Bewdley exempt from the jurisdiction of the Council of the Marches, xv. 139, 140.
Bewley in the New Forest, Perkin Warbeck takes sanctuary in, xi. 288.
Bias to the sailors at their prayers, xiii. 336.
his rule of friendship, xiii. 366.
how a man should order his life, xiii. 376.
Biform, Pan so, why, xiii. 96.
Biformia omnia revera sunt, xii. 445.
Bills of Review, xv. 352.
Bion, But where are they painted that were drowned? xiii. 335, 336.
of Socrates, xiii. 336.
to an envious man who was sad, xiii. 378.
Bishops, Prælati paribus, xiii. 411.
Black will take no other hue, xiv. 23.
Blackbourne, *his edition of Bacon's Works*, xiii. 317.
Blackheath, the Cornish rebels against Henry VII. encamp at, xi. 267.
defeated by Lord Dawbeney, xi. 272.
Blame, whom to blame for ills happening, xiii. 380.
Blewet plots Perkin Warbeck's escape from the Tower, xi. 302, 304.
Blood, when a good consideration, xiv. 250, 251.
challenge of, xiv. 251.
Bodmin, Perkin Warbeck arrives at, xi. 284.
Body, pliancy of the human, xiii. 298.
Boldness, Essay on, xii. 116–118.
in civil business, is first, second, and third, xii. 116.
the child of ignorance and baseness, *ib.*
ever blind, xii. 117.
a better quality in a follower than in a leader, *ib.*
Bonance, a, xiv. 31.
Bone, if not true set, will never be well till broken, xiv. 23.
Books, some to be tasted, some swallowed, some chewed and digested, xii. 252, 253, 291, 360.
Borgia, Cæsar, his bark not St. Peter's, xi. 171.
his murder of the Lords of Romagna, xiii. 331.
Bosworth Field, battle of, xi. 45.
Bothwell's attempt to seize the King of Scotland, insertion by Bacon in Camden's Annals of Queen Elizabeth, xii. 49.
Bouchier, Sir John, left as a pledge at Paris, by Henry VII. xi. 64.
Bouchier, Archbishop of Canterbury, Henry VII. dines with, xi. 56.
Bourn, Secretary, his son, xiii. 337, 338.
Boutefeu, xi. 136.
Bows of the Cornishmen, xi. 273.
Brackenbury, Lieutenant of the Tower, refuses to murder the two young princes, xi. 215.
Brain, castoreum taken for disease of, xii. 167.

Brampton, Lady, Perkin Warbeck travels in her train to Portugal, xi. 205.
Brandled the fortunes of the day, xi. 273.
Brandon, Thomas, *commander of Henry VIIth's fleet against the Irish rebels*, xi. 85.
Bray, Sir Reignold, his downfall sought by the Cornish rebels, xi. 265.
his death, xi. 324.
Braybrooke, James, sent by Henry VII. to report on the young Queen of Naples, xi. 338, 339.
Briareus, emblem interpreted, xii. 129.
Bribery, xii. 114, 326.
Cicero on, xiii. 368.
Bridewell, discourse on commission of, xv. 11–21.
date of, xv. 9, 10.
charter of, repugnant to Magna Charta, xv. 16.
Brisquet, jester to Francis I., xiii. 370.
Britain, the true greatness of, xiii. 231–255.
Preface, xiii. 221–228.
Brittaine, object of the ambition of Charles VIII. xi. 97, 98.
invaded by him, xi. 109, 176.
Lord Woodville joins the Duke with English auxiliaries, xi. 105, 110, 111.
speech of Chancellor Morton, respecting the invasion, xi. 117–124.
death of Francis the Duke, xi. 128.
conquered by Charles VIII. xi. 129.
Henry VIIth's policy, xi. 149–151, 356.
Anne, duchess of Brittaine, by proxy married to Maximilian, xi. 153, 154.
what became of the English forces, xi. 154, 155.
French embassy respecting, xi. 157–173.
Charles VIII. himself married to the Dutchess Anne, xi. 172, 173.
arrangement of the dates of the above transactions, xi. 165–168.
Brittaine — *continued.*
Henry VIIth's preparations for war with France, xi. 176–178.
Brocage of an usurper, xi. 47.
Bromley, Mr., his answer to counsel, xiii. 340.
Brooke, Robert Lord, leads 8,000 men into Brittaine, against Charles VIII. ix. 127, 129.
sent by Henry VII. to raise the siege of Exeter, xi. 287.
Brothers, younger, commonly fortunate, but not where the elder are disinherited, xii. 101.
Broughton, Sir Thomas, shelters Lord Lovell, xi. 69.
joins the standard of Symnell, xi. 87.
dies on the field, xi. 91.
Browne, Dr., on Sir Edward Dyer's story of Kelley the alchemist, xiii. 383, 384.
Browne, Sir Thomas, *possibly author of the Essay on Death*, xii. 386.
Brownlow *v.* Michell, xv. 257–311.
Bruges rebels against Maximilian, xi. 150.
submits, xi. 187–190.
Brutus, Decimus, his treatment of Julius Cæsar, xii. 168.
Brutus, Marcus, phantasm appeared to, xii. 204.
Buckingham, Duke of, raises troops to relieve Exeter, besieged by Perkin Warbeck, xi. 287.
Bacon's essays dedicated to, xii. 77.
Building, essay on, xii. 228–235.
use to be preferred to uniformity, xii. 228.
salubrity of site, *ib.*
a perfect palace described, xii. 230–235.
Bulloigne, siege of, by Henry VII. xi. 195.
Bulls, two sacrificed by Prometheus to Jupiter, xiii. 145, 152.
Burning in the hand, xi. 133.
Burrowash, conveyance of the manor by Sir John Stanhope, xv. 78.
Busbechius, anger of the Turks at cruelty to a fowl, xii. 118.
Business, three parts of, preparation, examination, and perfection, xii. 163, 335.
Butler's case, xv. 295.

C.

Cabinet counsels, a remedy worse than the disease, xii. 148, 331.
the doctrine of Italy, and practice of France, *ib.*
meaning of the term, xii. 148.
Cabot, Sebastian, *his discoveries*, xi. 295.
Cæsar Augustus, his character by Bacon, xii. 43, 44.
imago civilis ejus, xii. 33.
his deathbed speech, xii. 85, 317.
his times inclined to atheism, xii. 136, 340.
marriage of his daughter Julia to Agrippa, xii. 168.
used a sphinx for his seal, xiii. 162.
signo sphingis usus, xiii. 57.
his misfortunes collected by C. Plinius, xiii. 134.
retort of the young man who resembled him, xiii. 348.
to one who feasted him poorly, xiii. 354.
of Alexander, *ib.*
to Livia, xiii. 355.
had better never been born, or never died, xiii. 350.
of his infamous descendants, xiii. 379.
Cæsar, Julius, his character, xii. 35–41.
Published by Dr. Rawley among the Opuscula Posthuma, xii. 25.
method of his rise to the sovereignty, xii. 37.
talents in war, xii. 39.
friends and pleasures, xii. 40, 41.
his affection for Decimus Brutus, xii. 168.
youth of, xii. 223.
his collection of apophthegms, xiii. 327.
his saying to the pilot, xii. 217; xiii. 286.
respecting Sylla, xii. 130.
desired a sudden death, xii. 400.
of Sylla, that he could not dictate, xiii. 356.
Seneca of, xiii. 357.
to Metellus, protecting the public treasury, xiii. 374, 375.
to a soldier who boasted of the wounds in his face, xiii. 337.
Cæsar, Julius — *continued.*
address to his mutinous soldiers, xiii. 356.
when the mob called him king, xiii. 367.
imago civilis ejus, xii. 27–32.
ambitio ejus, xii. 27–29.
viam ad regnum quomodo sternebat, xii. 29.
virtus in bellicis, xii. 31.
amici ejus, et voluptates, xii. 31, 32.
Cæsar, Tiberius, his favourites, xiii. 106, 107.
conversatio cum parasitis, xii. 454.
Caius Marius, for the noise of arms could not hear the laws, xiii. 379, 380.
Calais, Lord Cordes saying, "that he would be content to lie seven years in hell, so he might win Calais," xi. 153.
Henry VII. at, xi. 198.
retained by the English, why, xiii. 237.
Calanus, the Indian, his advice to Alexander, xiii. 254.
Calendars of tempests of State, xii. 123, 379.
Callisthenes, how to be the most famous man in the world, xiii. 355, 356.
Calpurnia, her dream, xii. 168.
Calvin's case, Bacon's argument in, xv. 191, 193–247.
Cambridge: De Sapientiâ Veterum, dedicated to the University, xiii. 71.
Camden, *his Annals of Queen Elizabeth, history of the manuscript*, xii. 47, 48.
Bacon's additions and corrections, xii. 49–65.
Campbell, Lord, *his statement that James I. made Bacon expunge a legal axiom*, xi. 61.
his opinion of the value of the speeches inserted by Bacon in his history, xi. 116.
Cannibalism, xiii. 216.
Canonization of saints, xi. 348, 349.
Cantabrigiensi Academiæ, Baconus librum De Sapientiâ Veterum dedicat, xii. 423.
Cap of maintenance, and sword, sent by Pope Alexander to Henry VII. xi. 281.

Capel, Sir William, fined 2000*l.* for misgovernment in his mayoralty, xi. 234, 352.
sent to the Tower, *ib.*
Capræ pedes, cur Pan habet, xi. 445.
Cares, human, moderation of, xiv. 85, 86.
twofold excess of, *ib.*
Carews, the, march to the relief of Exeter, besieged by Perkin Warbeck, xi. 287.
Caroe, Sir John, receives Philip, King of Castile, at Weymouth, xi. 343.
Caroon, Lord Henry Howard's pun on his name, xiii. 395.
Cartilio, Alonzo, Bishop, when asked to turn away his servants, xiii. 340.
Carvajal, Francis, to Diego Centeno, xiii. 360.
when taken on a hurdle to death, *ib.*
Case, action on, for slander, battery, and maiming, xiv. 373.
Cases at Law, the principle to be extracted, xiv. 180, 184.
if a case have no cousin, it is a sign it is illegitimate, xv. 147.
Cassandra, or plainness of speech, the fable interpreted, xiii. 83, 84.
sive Parrhesia, fabula de, xii. 433, 434.
Cassius to the astrologer, xiii. 354.
Castello, Adrian de, the Pope's ambassador to Scotland, xi. 139.
honoured and employed by Henry VII. *ib.*
excited by a prophecy to aim at the papacy, xi. 140.
Castile, policy of Ferdinando, respecting, xi. 337, 341.
three aspirants for the government, at the death of Philip, xi. 350.
Casting counters, xiii. 355.
Castoreum taken for disease of the brain, xii. 167.
Cat in the pan, turning the, xii. 156.
knows not whose lips she licks, xiv. 26.
cat's nature, and the wench's fault, *ib.*
Catches, sung anthem wise, xii. 209.
Cato rejoiced that he had no statue, xiii. 377.
how to keep good acts in memory, xiii. 379.
Cato — *continued.*
they that found Cato were ashamed instead Cato, xiii. 381.
Cato Major, Livy's descriptic xii. 216, 358.
Cato, Marcus, an example of less plain speaking, xiii.
parrhesiæ inutilis exem xii. 434.
Cato the elder, his saying resp the Romans, xiii. 334.
on his second marriage, son, xiii. 360, 361.
Catulus, to the juryman who a ted Clodius, xiii. 333.
Catullus quoted, xiii. 65, 170,
Catyline, Mr. Justice, his sugg to Mr. Bromley, xiii. 340.
Caucasus, Prometheus chaine xiii. 146.
Promethei carcer, xiii. 43.
Causa, in jure non remota, sed ima, spectatur, xiv. 189–193.
Cause, the proximate, not th mote, regarded, *ib.*
Cavendish, *one of Elizabeth's tees*, xv. 253.
Cecile, Dutchess of York, motl Edward IV., dies at Barkhan xi. 239.
Celerity in execution, xii. 153.
Celestial bodies, their influen earthly matters, xii. 275.
Celibacy, Essay on, xii. 10 321, 322.
Celsus, a wise man, as well as sician, xii. 189, 343.
Centeno, Diego, Francis Carva xiii. 360.
Ceremonies and respects, Ess xii. 256–258, 293, 294, 36
ceremonies and green rush for strangers, xiv. 21.
Ceres, her search for Proserpin 163, 166.
Proserpinæ mater, xiii. 58.
discovered by Pan, meani the fable, xiii. 100.
a Pane inventa, xii. 448.
Certainty, three degrees of, pre name, and demonstrati reference, xiv. 267, 269.
person uncertain, how far the Statute of Uses, xi 343.
in pleading, xiv. 206, 210 — See *Ambiguity.*

Certiorari, xv. 355.
Cestui que use, savings in favour of, by Statute of Uses, xiv. 337.
when in at common law, xiv. 345–349.
Challenge of blood, xiv. 251.
Chancery, the general conscience of the realm, xiv. 292.
ordinances in, xv. 351–372.
Chantries, the Statute of, xiv. 232.
Chaos coeval with Cupid, xiii. 122.
coævum Amori, xiii. 22.
Characters of a believing Christian, xiv. 143–151.
probably not by Bacon, xiv. 139–142.
Chariot-driver of cruelty, Reason employed as, xii. 315.
Charitas, de exaltatione ejus, xiv. 70.
Charities, defer not until death, xii. 202, 349.
Charity, the exaltation of, xiv. 84, 85
Charles the Bald, Scottus' answer to, xiii. 352.
Charles the Hardy, Duke, xii. 169.
Charles, Prince, of England, *his proposed marriage with the Infanta*, xiii. 175.
Charles, Prince of Castile, marriage treaty between him and Mary, daughter of Henry VII. xi. 353.
Charles, King of Sweden, his treatment of the Jesuit colleges, xiii. 345.
Charles VIII. of France, his relations with Henry VII. of England, xi. 97, 98.
his ambition, *ib.*
projects respecting Brittaine, xi. 98, 99.
sends ambassadors to Henry VII. xi. 99–104.
besieges Nantes, xi. 109, 177.
ambassadors of Henry VII. outwitted by him, xi. 111.
conquers Brittaine, xi. 129.
Treaty of Frankfort with Maximilian, xi. 155.
contracted to the daughter of Maximilian, *ib.*
marries Anne, Dutchess of Brittaine, xi. 171–175.
designs on Naples, xi. 162.
on the Ottoman Empire, *ib.*
makes a peace with Ferdinando and Isabella, xi. 195.
Charles VIII. — *continued.*
peace of Estaples with Henry VII. xi. 196, 198.
conquered Naples, and lost it, xi. 238.
sends an embassy to England, xi. 275.
his death, xi. 300.
Charters, what the king may grant, xv. 11–16.
Chaste women often proud, xii. 102, 322.
Chattels, property in, how gained, xiv. 425.
not within the Statute of Uses, xiv. 325.
See *Property.*
Chepstow Bridge, who charged with the repairs of, xv. 136.
Cheshire proverb, "God send him joy, and some sorrow too," xiii. 413.
Chess, xii. 117.
Chester, Earldom of, an appanage to the principality of Wales, xi. 229.
exempt from the jurisdiction of the Court of the Marches, xv. 98, 128, 135, 136, 151.
Chester's wytt to deprave, and otherwise not wyse, xiv. 34.
Chievances, unlawful, which is bastard usury, xi. 134.
Children, and Parents, essay on, xii. 99–101, 322, 323.
benefit of having children, xii. 99, 322.
unequal distribution of parental affection, xii. 100, 322.
treatment and education of, xii. 99–101, 322.
Chilon on kings' favourites, xiii. 355.
on gold, xiii. 375.
China, ordnance used in for 2000 years, xii. 279.
Chivalry, orders of, xii. 187.
Chressenor, Thomas, tried for Perkin Warbeck's rebellion, and pardoned, xi. 223.
Christ, incarnation of, xiv. 53.
Christian Paradoxes, xiv. 143–151.
probably not by Bacon, xiv. 139–142.
Christianity, a war for its propagation, whether justifiable, xiv. 199, 200.
a bond among nations, xiv. 216, 217.

Christianity — *continued.*
worthy to be received, though not confirmed by miracles, xiii. 379.
Chudleigh's case, xiv. 279, 282, 284, 293, 302, 354–356.
Bacon's argument in, xv. 159–187.
limitations in, xv. 159.
Church, unity in the, xii. 87.
controversies in, xii. 89, 90, 315, 316.
Catholic, xiv. 55, 56.
visible, xiv. 56.
the keeper of the Scriptures, xiv. 96.
penalties for dissuading from attendance at, xv. 333.
Churmne of reproaches and taunts, xi. 292.
Chymistæ theorica eorum sine fundamento, practica sine certo pignore, xiii. 61.
Cicadam, Tithonus cur versus in, xiii. 21.
Cicero on the piety of the Romans, xii. 134, 135, 339.
of the self-love of Pompey, xii. 159.
of Rabirius Posthumus, xii. 199, 349.
his books, De Oratore and Orator, xii. 230.
to Piso, xii. 165, 347.
warned beforehand against Octavius, xiii. 34, 135.
his conduct in banishment, xiii. 185.
his eulogy on the Academics, xiii. 270.
retort to Clodius, xiii. 333.
of a lady's age, xiii. 337.
to Pompey, xiii. 342.
on the law against bribery by the governors of provinces, xiii. 368.
quæ miremur, habemus; quæ laudemus, expectamus, xiii. 286.
Cineas to Pyrrhus, of the value of conquests, xiii. 368, 369.
Cioli, Andrea, *his translation of Bacon's Essays for Cosmo de' Medici*, xii. 73. 74.
Circuits of the Judges, xiv. 384–392.
Civil conversation, notes for, xiii. 309, 310.
Civil law and English, d
tween, xiv. 182.
Uses in time of At
301.
Claudius Appius, only tw
in history carried aw
he one, xii. 110.
Clarence, Duke of, xi. 7
Clausula derogatoria, x
vel dispositio inutil
sumptionem remo
sam ex post facto,
xiv. 258–264.
Clerks convict, to be bı
hand, xi. 133.
and ministers of lav
268, 269, 373.
Clement, Pope, his reply
dinal represented in
picture, xiii. 336.
Clement VIII. xiii. 194.
Clement, James, murd
Duke of Guise, correc
con in Camden, xii. 5
Cleon, his dream, xii. 20
Clergy, benefit of, xiv. 2
389.
curtailed by statut
VII. xi. 133.
an overgrown, bring
necessity, xii. 128
Clifford, Sir Robert, xi.
joins Perkin Warbe
ders, xi. 212.
declares him to be
York, xi. 213.
won over by King H
xi. 217, 218.
gives information to
of the partizans
Warbeck, xi. 225.
pardoned by the kin
impeaches Sir Willi
ib.
Clipping coins, statute of
relating to, xi. 314.
Clodius to Cicero, xiii. 3
Closeness, xii. 95, 96.
Cloth of estate, the kin
xi. 177.
Coape, Sir Walter, carri
tership of the wards
con, xiii. 410.
Cobali, attendants of B
138
circa Bacchum subsu
37.
Cobham, Lord, firm to

Cobham, Lord — *continued.*
against the Cornish rebels, xi. 266, 267.
Cocks may be made capons, but capons not cocks, xiii. 387.
Codification of the law, xv. 317–334.
Cœlum, or the origin of things, the fable interpreted, xiii. 113–116.
his genitals cut off by Saturn, xiii. 113.
is the concave which encloses all matter, xiii. 114.
interpretatio fabulæ, xiii. 15, 16.
genitalia ejus a Saturno demessa, xiii. 15.
concavum quod materiam complectitur, *ib.*
Coinage, regulated by statute of Henry VII. xi. 334.
his profitable recoinages, xi. 335.
statutes of Henry VII. respecting, xi. 146.
counterfeiting foreign coin current, *ib.*
Coke, Sir Edward, mentions the Great Council, but not its functions, xi. 369.
what he knew about the death of Prince Henry, xii. 11–13.
to an unexpected guest, xiii. 356.
his argument in Chudleigh's case, xiv. 293.
Cokers, a name given to labourers from Shires on the Welsh borders, xv. 149.
Collyweston, Henry VII. brings his daughter Margaret so far on her way to Scotland, xi. 323.
Colonization, essay on, xii. 194–198.
who fit for colonists, xii. 195.
choice of site, *ib.*
government of, xii. 197.
support of, by the parent country, *ib.*
by the Romans, xv. 221, 222.
Colour, beauty of, inferior to beauty of favour, and of motion, xii. 226, 352.
Colours that show best by candlelight, xii. 210.
of good and evil, xiii. 270–290.
preface, xiii. 259–264.
Colthurst's case, xv. 83.
Columbus sends his brother Bartholomæus to Henry VII. xi. 296.
his offer of the Indies to Henry VII. xv. 219.
Columbina innocentia, et serpentina prudentia, xiv. 69.
Comets, their influences, xii. 275.
Comineus, on Duke Charles the Hardy, xii. 169.
Commandments, the old woman's answer to the minister, xiii. 408.
Commission of Union between England and Scotland, xii. 151.
standing commissions commended, *ib.*
Commissions of the Judges, Oyer and Terminer, xiv. 386.
gaol delivery, *ib.*
assize, xiv. 389.
nisi prius, xiv. 389–391.
of the peace, xiv. 392.
examinations and depositions in Chancery, xv. 364–366.
Committing a cause, Lord Keeper Egerton's saying, xiii. 395.
Common, grants of, xiv. 211.
Common Place, Court of, its jurisdiction, xi. 130.
Common Pleas, institution of, xiv. 385, 386.
Commons, *House of, substituted for "Lower House" in 2nd edition of Apophthegms*, xiii. 320.
little danger to be apprehended from, in a state, except, &c., xii. 145.
Comnenus, Manuel, his heresy, xiii. 199.
Comparative Mythology, *Max Müller's Essay on*, xii. 409–415.
his theory contrasted with Bacon's, xii. 410.
Composition implies neediness, xiii. 277.
Concordia, Lionel, Bishop of, nuncio from Pope Alexander VI. to France and England, xi. 171.
Condition, collateral, xiv. 228.
Conditores imperiorum, xii. 264, 300.
Confession, proof of the antiquity of in the Church, xiii. 373.
of faith, xiv. 47–57.
Confidence daughter of Fortune, xii. 217, 359.
Conflict of rules of law, xiv. 202.
Confusion maketh things muster more, xiii. 276.
Congresall, Captain of Perkin Warbeck's French guard, xi. 208
Conqueror, tenures of land instituted by, xiv. 399–403.
our laws derived from, xiv. 375.

Conquest, the right of civilised nations to encroach on savages, xiii. 197.
Cineas to Pyrrhus, of the value of, xiii. 368, 369.
appropriation of lands at the, xiv. 392.
the naturalization of conquered subjects, xv. 218–222.
a remitter to the ancient right, xv. 239.
Consalvo, of a soldier's honour, xii. 272; xiii. 366.
of the gentleman who came after the fight, xiii. 358.
Conservation of life, necessity of, when a good plea, xiv. 213.
Conservators of the Peace, their office, xiv. 380, 381.
Consideration of blood, when good, xiv. 250.
in a deed, xiv. 295, 296.
Consilium *magnum*, xi. 370.
regum, fabula Metis, xiii. 62.
Consolation derived from examples of others in misfortune, xiii. 183–185.
Conspiracy, severe laws of Henry VII. against, xi. 131.
Constable, the office of, xiv. 375.
two high constables for every hundred, one petty constable for every village, xiv. 376.
appointed by the lord of the hundred, xiv. 378.
answers to questions touching the office of, xv. 339–346.
origin and election of, xv. 339–341.
office annual, xv. 341.
from what rank of men, xv. 341, 342.
duties performed gratis, xv. 342.
their authority, xv. 342–345, 381.
for matter of peace, xv. 343.
of peace and the crown, xv. 344.
for matter of nuisance, disturbance, and disorder, xv. 344, 345.
their oath, xv. 345.
difference between high and petty constables, xv. 346.
may appoint deputies, *ib.*
Constantinople, Henry VII. called on by the Pope to invade, xi. 314.
Elizabeth's agent at, correction by Bacon in Camden respecting, xii. 54.
Constantinople — *continu*
Christian boy like t
stoned at, xii. 118.
Contemplationes in vit
translatas nonnihil nov
quirere, xii. 423.
Contempt putteth an ed
xii. 272.
Contibald, James, *Maxi*
bassador to England an
174–176, 192.
Contracts, dissolution of, x
Contraries, xiii. 280.
Controversies in the Ch
avoid, xii. 89, 315.
two classes of, *ib.*
Conversation, the art o
194, 345–347.
notes for civil, xiii. 3
Coparceners, lease by, xi
Copulatio verborum incl
tionem eodem sensu, x
Copyholds forfeited to t
not to the crown,
uses compared to, xi
Cor ne edito, xii. 169.
Coranus the Spaniard, x
Corbet's case, xiv. 293.
Cord breaketh at the
weakest pull, xii. 127.
Cordal, Master of the Ro
Cordes, Lord, aids the re
ders against Max
151.
besieges Newport i
152.
his hatred of the En
brings overtures of
Charles VIII. to
xi. 194, 195.
Cork, Perkin Warbeck
206.
mayor of, executed
Warbeck, xi. 304.
Cornage, tenure by, xv.
Cornish men, a hardy ra
rebel against a subsi
Henry VII. xi. 26
march up to Lond
269.
defeated at Blackhe
strength of their bo
invite Perkin Wa
from Ireland, xi.
Cornua Panis, quid refer
Coronation of Henry V
worth field, xi.
in London, xi. 54,

Coronation — *continued.*
of Lambert Symnell at Dublin, xi. 85.
of Elizabeth, Queen of Henry VII. xi. 94.
Coroner, office of, xv. 380, 381.
Corporalis injuria non recipit æstimationem de futuro, xiv. 217–219.
Corporations, by-laws of, restrained by statute of Henry VII. xi. 333.
cannot be seized to a use, xiv. 340.
may take a use, xiv. 343.
may not limit a use without a deed, xiv. 350.
do not take by descent, xv. 232.
Corruptio unius, generatio alterius, xiii. 288.
Corruption and bribery of men in authority, xii. 114, 327.
Cosmo de Medici, *Italian translation of Bacon's Essays dedicated to*, xii. 73.
his saying against perfidious friends, xii. 93.
of forgiveness of friends, xiii. 371.
Cotton, Sir Robert, *supplies materials to Bacon in compiling his History of King Henry VII.* xi. 14.
less liberal in that of Henry VIII. xi. 393.
Cottonian library, *manuscripts destroyed by fire*, xi. 102.
Council of the Marches, Bacon's argument on the jurisdiction, xv. 119–154.
ancient, xv. 120, 123, 124.
its objects,
to bridle the Welch, xv. 121.
to facilitate commerce between England and Wales, xv. 122.
to dignify the Prince of Wales, xv. 123.
Great, *what*, xi. 115.
summoned by Henry VII. in his seventh year, before calling his Parliament, xi. 177.
called by Henry VII. xi. 261.
distinct from Parliament, xi. 367–374.
its composition, xi. 371.
matters referred to it, xi. 372.
Council of York, xv. 96, 105, 106, 109, 110, 116.
Council-chamber, arrangement of seats in, xii. 152.
Counsel, essay on, xii. 146–152, 330–333.
the greatest trust between men, xii. 146, 330.
legend of Metis, xii. 147; xiii. 167, 331.
inconveniences of, are three, want of secresy, xii. 148.
weakening of authority, xii. 149.
unfaithful counsellors, xii. 149–151.
for these, cabinet counsels are a remedy worse than the disease, xii. 148, 149.
defects of the present mode of meeting, xii. 151.
ask of the ancient, what is best, and of the latter, what is fittest, xii. 113, 326.
of two sorts, concerning manners, concerning business, xii. 171.
behaviour of judges towards, xii. 267, 268, 372.
Countebalt, ambassador from Maximilian to Henry VII. xi. 174–176, 192.
Countenance, necessary command of, xiii. 309.
Counterfeit coin, xv. 320, 321.
Country people, Pan why god of, xiii. 98.
County, charge of taken from the earls, xiv. 378.
County-courts divided into hundreds, *ib.*; xv. 340, 341.
kept monthly by the sheriffs, xiv. 379.
Court leets, origin and jurisdiction of, *ib.*; xv. 340, 341.
Court-yards for palaces, xii. 232–235.
Courtesy, tenant by the, xiv. 320.
Courtiers, like fasting days, xiii. 379.
bowing to lawyers and citizens, xiii. 400.
Courtney, Edward, created Earl of Devon, xi. 56.
William, Earl of Devonshire, committed to custody by Henry VII. xi. 330.
Courts of Justice, the attendance of, subject to four bad instruments, xii. 269, 372.

Courts of Justice — *continued.*
provincial, instituted by Henry VIII. xv. 95–97.
Covenants to stand seized, xiv. 420.
Covin, a use no covin, xiv. 290, 357.
Cranfield, Treasurer, xiii. 407.
his saying of men who shake their heads after others' speech, xiii. 334.
Crassus, on the death of his fish, to Domitius, xiii. 361.
Creation of the world, xiv. 49, 50.
Cretine d'eau, xiv. 214.
Crispus murdered by his father Constantine, xii. 143.
Critics, brushers of noblemen's clothes, xiii. 342.
Crœsus to Cambyses, of war, xiii. 359.
Croft, Sir Herbert, xv. 105–116.
Crofts *v.* Lord Beauchamp, xv. 292.
v. Kemperden, xv. 291, 292.
Cross set up by Ferdinando on the great tower of Grenada, xi. 190.
Crusade meditated by Charles VIII. xi. 163.
Pope Alexander attempts to organise one, xi. 313.
invites Henry VII. to join, *ib.*
money for, raised in England, *ib.*
against the Turks, xiii. 177.
Bacon's opinions respecting, xiii. 178.
Cruzada, xiii. 202.
Cuckoo, the form assumed by Jupiter, when wooing Juno, why, xiii. 121.
Cuculus, Jupiter Junonem sub formam cuculi petit, xiii. 21.
Culpepper's case, xv. 58.
Cunning, essay on, xii. 153–158, 319, 320.
a sinister or crooked wisdom, xii. 153, 319.
stratagems of, xii. 153–158, 320.
Cupid challenged by Pan to fight, meaning of the fable, xiii. 99.
meaning of the allegory, xiii. 122–125.
most antient of the gods, xiii. 122.
an egg of Night, *ib.*
the son of Venus, xiii. 122, 125.
signifies the natural motion of the atom, xiii. 122.
why a child, xiii. 124.
why naked, *ib.*
why blind, *ib.*
Cupid — *continued.*
why an archer, xiii. 125.
Cupiditas sub personâ Bacchi describitur, xiii. 36, 37.
Cupido, a Pane provocatus, interpretatio fabulæ, xii. 447; xiii. 22–25.
deorum antiquissimus, xiii. 22.
ex ovo Noctis, *ib.*
Veneris filius, xiii. 23.
motus generalis atomi significat, *ib.*
cur infans, xiii. 24.
cur nudus, *ib.*
cur cæcus, xiii. 24, 25.
cur sagittarius, xiii. 25.
Curæ, mensura curarum, xiv. 70, 71.
excessus earum duplex, xiv. 71.
Curiosity, its results illustrated, by the fables of Actæon and Pentheus, xiii. 108, 109.
Cursitors for original writs, instituted, xv. 275.
Curson, Sir Robert, Governor at Hammes, joins the Earl of Suffolk as a spy, xi. 330.
excommunicated together with the Earl, xi. 331.
returns to England, *ib.*
Custom and education, essay on, xii. 213–216, 356–358.
examples of the force of, xii. 214, 357.
the principal magistrate of man's life, *ib.*
most perfect when begun in youth, *ib.*
Customs, law of Henry VII. for the security of, xi. 134.
Customs of the Realm, xv. 11.
Cyclopes, or ministers of terror, interpretation of the fable, xiii. 87, 88.
ministri terroris, xii. 436, 437.
Cycniæ cantiones, xiii. 28.

D.

Dacre, Lord, his case, xiv. 293.
Dædalus, or the mechanic, interpretation of the fable, xiii. 129–131.
interpretatio fabulæ, xiii. 28–31.
Dam, the seaport of Bruges, xi. 187.
taken by stratagem, by the Duke of Saxony, xi. 188.

Damages, xiv. 321, 322.
an argument of property, xv. 44, 45.
Dammasin trees, xii. 237.
Dances to song, have extreme grace, xii. 209.
turned into figure, a childish curiosity, *ib.*
Dangers are no more light, if they once seem light, xii. 152.
Darcy, Lord, sent into Cornwall to impose fines, after the rebellion of Perkin Warbeck, xi. 291.
Daubigny, Bernard, sent by Charles VIII. to Henry VII. xi. 110.
Daubigny, Lord, deputy of Calais, raises the siege of Dixmue, xi. 151, 152.
negotiates the treaty of Estaples with Lord Cordes, xi. 195.
Daunus, entertainer of Diomede, xiii. 126.
Diomedis hospes, xiii. 26.
David's harp has as many hearse-like airs, as carols, xii. 94.
Dawbeney, Lord, defeats the Cornish rebels at Blackheath, xi. 268, 272.
Giles, Lord, made Lord Chamberlain, xi. 230.
William, tried for Perkin Warbeck's rebellion, and beheaded, xi. 223.
De fide et officio judicis, non recipitur quæstio, sed de scientiâ; sive sit error juris sive facti, xiv. 246–249.
De non procedendo rege inconsulto, Bacon's argument on the writ, xv. 257–311.
Proceedings in the case, xv. 251–256.
antiquity and worth of the writ, xv. 258.
the end of the writ, xv. 259, 261–276.
the efficient, xv. 260, 276–283.
the matter, xv 260, 283–296.
the form, xv. 260, 296–309.
two kinds of this writ, xv. 271.
De Sapientiâ Veterum, Latin, xii 433–454; xiii. 9–66.
English translation, xiii. 83–172.
Editor's Preface, xii. 405–417.
Dedications, xiii. 69–72.
Preface, xiii. 75–81.
former popularity and present neglect, xii. 408.
De Sapientiâ Veterum — *continued.*
text, xii. 417.
dedicatio Comiti Sarisburiensi, xii. 421.
Academiæ Cantabrigiensi, xii. 423.
Præfatio, xii. 427–432.
De Thou, *memorial of Q. Elizabeth, communicated to*, xi. 413; xii. 11.
De Victoria, the maxim, non fundatur imperium nisi in imagine Dei, xiii. 210.
Death, Essay on, xii. 84–86, 316, 317.
another Essay, not by Bacon, possibly by Sir Thomas Browne, xii. 386, 394–401.
fear of, xii. 84, 316, 395.
pains of, xii. 84, 317, 399.
approach of has little effect on good spirits, xii. 85, 317.
deaths of remarkable men, *ib.*
we die daily, xii. 394.
unagreeable to aldermen and citizens, xii. 397, 398.
gracious only to those in misery, *ib.*
early deaths of men of promise, xiii. 119.
comes to young men, old men go to it, xiii. 354.
Deathbed sayings, xii. 85, 317.
Declarations, distinguished from grants, xiv. 240.
Dedications, Seneca's, xiii. 179.
Deed ever imports a consideration, xiv. 295, 296.
Deer pasture, xiv. 211.
Deformed people envious, xii. 104.
commonly even with nature, xii. 227, 353.
extreme bold, xii. 227, 354.
observers of the weak points of others, *ib.*
sometimes excellent persons, xii. 228, 354.
Deformity, essay on, xii. 227, 228, 353, 354.
not a sign of character, but a cause, xii. 227, 354.
in a great wit is an advantage in rising, xii. 228, 354.
Deipara, xiv. 52.
Delamer's case, xiv. 291, 299; xv. 167, 185.
Delapole, William, committed to custody by Henry VII. xi. 330.
Delays of men in authority, xii. 114, 326.

Delays — *continued.*
essay on, xii. 152, 153.
Deluges, xii. 274.
Demades, Antipater to, xiii. 353.
Demeanour, the art of, xii. 164, 165, 346–348.
Demetrius of Macedon, when he had refused a petition to an old woman, xiii. 362.
when the fever left him, *ib.*
Democritus, charged with Atheism, xii. 132, 338.
his philosophy illustrated by the fable of Cœlum, xiii. 114.
his opinion that the world might again revert to chaos, xiii. 115.
his atomic theory, xiii. 124.
more to be approved than Aristotle, xiii. 150.
truth, like ore, needs refining, xiii. 384.
philosophia ejus non multùm discrepat a fabulâ Cœli, xiii. 15.
opinio ejus mundum in antiquam confusionem posse relabi, xiii. 16.
de motu atomorum, xiii. 24.
philosophia ejus magis probanda quàm Aristotelis, xiii. 47.
Demonax, concerning his burial, xiii. 334, 335.
Demosthenes, his conduct in banishment, xiii. 185.
his grounds of hope for Athens, xiii. 283, 284.
his reproof to the Athenians, xiii. 288.
when upbraided by Æschines, xiii. 353.
when charged with cowardice, xiii. 363.
when warned that the Athenians would kill him, if they waxed mad, xiii. 371.
Demurrer on evidence, xiv. 209.
Denization, xv. 203, 204.
Deportment, the art of, xii. 164, 165, 346–348.
Deptford Bridge, action at, between Lord Dawbeney and the Cornish rebels, xi. 272.
Derby, Ferdinand Earl of, lawsuit for the Isle of Man at his death, note in Camden by Bacon, xii. 56.
Derogatoria clausula, xiv. 251–255.
Descent, the rules of, xiv. 394–398.
Description, certainty o
273.
of such things as ha
denomination, xii
where the notes are
nity, *ib.*
Desemboltura, xii. 216,
Desire described in th
Bacchus, xiii. 139.
Detraction, xiv. 23.
Detractor portat Diabolu
xiv. 23.
Deucalion and Pyrrha,
the fable, xiii. 13
interpretatio fabulæ,
Devil, envy his proper a
109.
Devonshire, Cornish re
Henry VII. mar
xi. 266.
Earl of, relieves
sieged by Perki
xi. 287.
Diana and Actæon, inte
the fable, xiii. 108
interpretatio fabulæ,
Diaries of travels, how
xii. 138.
Diem solvit extremum,
made into a patent of
Diet, how to regulate,
343.
Digby, Sir John, Lieute
Tower, in charge
Warbeck, xi. 302.
ambassador to Spai
177.
Digestion, xii. 161, 333.
Digg's case, xv. 83.
Dighton, John, one of th
of the two princes in
xi. 214–217.
Dilatories, the king's pr
xv. 276–280.
Diogenes, when asked h
be buried, xiii. 33
to Plato, xiii. 351, 3
begging of a prodig
looking for a man, x
when the mice came
xiii. 380.
Alexander's visit to,
to a young man da
tily, *ib.*
called an ill musici
ib.
seeing a bastard thro
xiii. 385.

Diomedes, or religious zeal, explanation of the fable, xiii. 126–128.
interpretatio fabulæ, xiii. 26–28.
Dionysius, when a schoolmaster, to one that insulted him, xiii. 347.
the elder, to his son, xiii. 355.
Dionysus, or Desire. — *See* Bacchus.
Disclaimer, xiv. 231.
Discontentment, xii. 108.
public, how to remove, xii. 127–131.
Discontinuance, xiv. 224–226.
Discourse, Essay on, xii. 191–194, 345, 346.
Dishonour, or Juno's suitor, meaning of the fable, xiii. 121.
Disinteress, xi. 120.
Dismes imposed by Henry VII. xi. 255.
Dismissions of causes in Chancery, xv. 354, 355.
Dispatch, essay on, xii. 161–163, 333–335.
Dissimulation, essay on, xii. 95–99.
a faint kind of wisdom, xii. 95.
follows on secrecy by a necessity, xii. 97.
advantages of it, xii. 98.
disadvantages, *ib.*
Dissolution of contracts, xiv. 256–258.
Distress, right of, xiii. 207.
Divers, their power of holding the breath, xiii. 298.
Divinatio, non interpretatio est, quæ omninò recedit a literâ, xiv. 204.
Dixmue, besieged by the French under Lord Cordes, xi. 151.
relieved by Lord Daubigny, xi. 152.
Doctors' reports in Chancery, xiii. 395.
Dog, his courage in presence of his master, xii. 134, 339.
death of Lord Bacon's, xiii. 413.
Dogmatica facultas cum Empiricâ adhuc non benè conjuncta, xiii. 48.
Dogmatical and Empirical faculty, not well united, xiii. 151.
Dorset, Marquis of, left as a pledge at Paris by Henry VII. xi. 64.
committed to the Tower by the King, xi. 86.
set at liberty, xi. 94.
Double vexation, in Chancery and at Common Law, not permitted, xv. 355.
Dove, the spirit of Jesus was the spirit of the Dove, xiv. 82.
innocency of, and wisdom of the serpent, xiv. 83, 84.
Dower, xiv. 247, 320, 336.
Dowry, patrimonial, carries no part of sovereignty, xi. 221.
Drake, Sir Francis, clause inserted by Bacon in Camden's Annals of Queen Elizabeth relating to him, xii. 50.
Dream of Lady Margaret, mother of Henry VII. xi. 365.
of the daughter of Polycrates, xii. 303.
of Philip of Macedon, *ib.*
of Domitian, *ib.*
of Cleon, xii. 205.
your old men shall dream dreams, xii. 224, 352.
Droughts, xii. 274.
Drunkenness, why no defence, xiv. 217.
Dublin, coronation of Symnell at, xi. 85.
Dudley, and Empson, horse-leeches and shearers for the king, xi. 324.
their oppressions, xi. 326, 351, 352.
made speaker of the House of Commons, xi. 332.
Duress, xiv. 251, 264, 265.
Dutch, free fishing on the coasts of England not confirmed to them, xi. 347.
Dyer, Sir Edward, his story of Kelley the alchymist, xiii. 382, 383.

E.

Earl *v.* Snow, xv. 185.
Earls, the turn first held by, xiv. 377.
charge of county taken from, xiv. 378.
Earth gives counsel to Jupiter, xiii. 87.
Earthquakes, xii. 274.
East and West, wars anciently moved from east to west, xii. 277.
have no certain points of heaven, *ib.*
Ecclesia scripturarum custos, xiv. 80.
Echo companion of Narcissus, xiii. 89.

Echo — *continued.*
fable of her marriage with Pan explained, xiii. 101.
Narcissi comes, xii. 438.
uxor Panis, xii. 448.
Edgecombe, Sir Richard, ambassador to France, xi. 96.
at Rennes, xi. 149.
Edmondsbury, Henry VII. at, xi. 86.
Edmund, son of Henry VII., dies in infancy, xi. 300.
Education, essay on, xii. 213–215, 356–358.
the power of, xii. 215, 357.
most perfect when begun in youth, *ib.*
is but an early custom, *ib.*
Edward the Confessor, title to the crown founded on his will, xi. 50.
Edward Plantagenet, prisoner in the Tower, xi. 78.
paraded through the streets of London, xi. 80.
Edward I., the principal lawgiver of our nation, xiv. 172; xv. 202.
Edward II., xiii. 353.
Edward IV., his popular reign, xi. 48.
invented benevolences, xi. 183.
godfather of Perkin Warbeck, xi. 201.
godfather not of Perkin, but of Edward, the converted Jew, ib.
Egerton, Lord Keeper, xiii. 395.
Egg of Night, Cupid, xiii. 122.
self-lovers will burn the house to roast their eggs, xii. 342.
Egremond, Sir John, heads the rising in Yorkshire and Durham against Henry VII. xi. 135.
flies to Lady Margaret of Burgundy, xi. 136.
Egypt, excellence of its geographical position, xiii. 253.
Egyptians, vagabonds calling themselves, xv. 328.
Elias, or Hialas, ambassador from Ferdinando and Isabella to Henry VII. xi. 277.
Elizabeth, Queen, question of her legitimacy, xi. 320.
Bacon's notes to Camden's Annals of her reign, xii. 49–65.
her agent at Constantinople, note by Bacon in Camden respecting, xii. 54.
conspiracy of Roderigo Lopez to poison her, note by Bacon in Camden respecting, xii. 55.
Elizabeth — *continued.*
how dealt with, when bills were to be signed, xii. 154.
applications of two for the office of secretary, xii. 156.
not independent of subsidies, xiii. 223, 224.
playing on the virginals, xiii. 328.
her reply to Sir John Rainsford, xiii. 329.
Sir Nicholas Bacon to, xiii. 330.
and Pace the fool, *ib.*
to Lord Essex, *ib.*
concerning the Commission of Sales, xiii. 340.
her instructions to great officers, xiii. 341.
her dilatoriness with suitors, xiii. 344.
when the archduke raised the siege of Grave, xiii. 346.
to Master Sackford in his new boots, xiii. 348.
when warned of conspiracies against her life, xiii. 375.
at Theobald's knighted seven gentlemen, xiii. 376.
to Lady Paget, xiii. 382.
of her successor, xiii. 390.
to Sir Edward Dier, xiii. 400.
concerning magistrates, *ib.*
her reign a fit time for remodelling the English law, xiv. 173, 174.
foiled in creating a new patent office, xv. 252, 253.
Elizabeth, Queen of Henry VII. her title to the crown, xi. 48.
ordered to reside with the Queen Dowager, xi. 52.
again betrothed to the king, xi. 53.
marriage, and married life, xi. 65, 66.
coronation, xi. 94.
dies in childbed in the Tower, xi. 324.
Elizabeth, *widow of Edward IV.* xi. 96.
Ellesmere, Lord, of a man newly married, xiii. 413.
anecdote of, xiii. 402.
Emmanuel, king of Portugal, xiii. 196.
Empedocles complained that we know nothing, xiii. 150.
philosophia ejus magis probanda quàm Aristotelis, xiii. 47.

Empire, essay on, xii. 140–146, 328, 329.
true temper of, xii. 140, 328.
great empires enervate their subject nations, xii. 278.
Empirical philosophers, like pismires, xiii. 404.
Empson and Dudley, their relation to Henry VII. xi. 39, 357.
horse-leeches and shearers for the king, xi. 324.
their oppressions, xi. 234, 326, 351, 352.
cause of the overthrow of, xv. 18.
Enclosures, statute of Henry VII. respecting, xi. 142.
Endymion, fable of, interpreted, xiii. 106, 107.
interpretatio fabulæ, xii. 453, 454.
as explained by Max Müller, xii. 412–416.
England and Flanders, man and wife, xi. 219.
why an overmatch for France, xii. 180.
riches of the kingdom, xiii. 251.
Entails, how created, xiv. 411.
began by statute of Edward I. xiv. 411, 412.
inconveniences of, remedied by Act of Parliament, xiii. 412, 413.
Entreprenant, xii. 217, 359.
Entry, title to lands gained by, xiii. 392–394.
Envy, essay on, xii. 103–109.
its relation to love, xii. 103.
called in Scripture, an evil eye, *ib.*
a gadding passion, xii. 104.
what persons apt to envy others, xii. 104, 105.
what persons most subject to be envied, xii. 105–107.
redoubleth from speech and fame, xii. 105.
ever joined with the comparing a man's self, xii. 106.
mollified by chanting a "Quanta patimur," *ib.*
cure of it, xii. 108.
difference between public and private, *ib.*
public is a disease in a state, *ib.*
the most importune and the vilest of affections, xii. 109.
Envy — *continued.*
the proper attribute of the Devil, xii. 109.
the canker of honour, xii. 264, 300.
predominant in great artists, xiii. 130.
Epaminondas refused Pelopidas that which he granted to his concubine, xiii. 373.
taught the Spartans to speak long, *ib.*
Epictetus, who to be blamed, xiii. 380.
Epicureans never join other philosophies, though other philosophers become Epicureans, xiii. 387.
Epicurus, his atomic theory, xiii. 124.
his atheism, xii. 133, 338.
tentamenta, xiii. 289.
got rid of Fate, and made room for Fortune, xiv. 95.
de motu atomorum, xiii. 24.
Fatum sustulit, et Fortunæ locum dedit, xiv. 79.
Epidemic sweating sickness, xi. 54, 55.
Epimetheus, brother of Prometheus, xii. 129, 381; xiii. 145.
his followers the improvident, xiii. 153.
frater Promethei, xiii. 43, 50.
Equivocation, distinguished from variance, xiv. 276.
Erasmus, *extracts by Bacon from his Adagia*, xiv. 14.
Erichthonius, or Imposture, meaning of the fable, xiii. 132.
interpretatio fabulæ, xiii. 31.
Error, grounds on which it may be assigned, xiv. 246–249.
in fact, *ib.*
in law, *ib.*
Escheat, property of lands by, xiv. 398–409.
to what lords, xiv. 399–405.
by what attainders, xiv. 405–409.
Escheator, office of, xv. 380.
Esquires, *summoned to attend the King's Great Council*, xi. 371, 372.
Essays, or Counsels Civil and Moral, xii. 75–280.
as they appeared in the first edition, xii. 291–382.
spurious, xii. 387–401.
editions, xii. 69.

Essays — *continued.*
text, xii. 70.
Latin translation of, xii. 72.
other translations, xii. 73, 74.
dedication to the Duke of Buckingham, xii. 77.
table of, xii. 79.
the recreation of his other studies, xiii. 188.
Essex, Earl of, corrections by Bacon in Camden's Annals,
respecting his expedition to Spain in 1589, xii. 50.
respecting the false alarm of a Spanish invasion in 1559, xii. 57.
his trial for treason, xii. 61–64.
at the succour of Rhoan, xiii. 330.
his one friend the queen, his one enemy himself, xiii. 390.
Estaples, *treaty of*, xi. 175.
peace of, between Henry VII. and Charles VIII. xi. 195, 198.
Estates differ in time of continuance, xiv. 328.
in time of possession, *ib.*
how created, xiv. 409.
for years, xiv. 409, 410.
for lives, xiv. 410, 411.
in tail, xiv. 411–414.
in fee simple, xiv. 414, 415.
conveyed by feoffment, xiv. 416.
fine, *ib.*
recovery, xiv. 417, 418.
bargain and sale, xiv. 418, 419.
covenant to stand seized, xiv. 420, 421.
will in writing, xiv. 421–425.
Estovers, xiv. 211.
Eternity, three parts of, xiv. 56.
Ethelwald, Bishop of Winchester, sold the church plate to relieve the poor, xiii. 352.
Ethiops in the phial of Nemesis, xiii. 33, 34, 134, 136.
Eunuchs, envious, xii. 104.
why trusted by kings, xii. 228, 354.
Eure, Lord, xv. 106–114.
Euripides, of the autumn of life, xiii. 358.
Evil comes in contact with good, how, xiii. 282.
whether God the author of, xiv. 96.
Evil eye, xii. 103.
Exchequer, Court of, its jurisdiction, xi. 130.
Excommunication, Pope's Bull of, published at Paul's Cross, xi. 331.
Excusat, aut extenuat, delictum in capitalibus, quod non operatur idem in civilibus, xiv. 219, 220.
Executors, xiv. 207, 226, 227, 428–432.
Exercises, appropriate to each disease, xii. 253.
the efficacy of exercise or practice, xiii. 301.
Exeter, besieged by Perkin Warbeck, xi. 285.
visited by Henry VII. xi. 289.
Exile, no punishment to an excellent artisan, xiii. 130.
abjuration and exile, offences of, xv. 333, 334.
Exilium præstanti artifici vix supplicium, xiii. 29.
Expense, essay on, xii. 174, 175, 297, 298, 344, 345.
ought to be but to half the receipts, xii. 175, 297.
Experientia, res stupida, et plena moræ, xiii. 48.
Extortions of Henry VII. xi. 325, 326.
Eye, evil, xii. 103.
maliciously putting out, felony, xiv. 374.

F.

Fabours, *of Gyngham, drawn down by the garrison*, xi. 149.
Fabricius to Pyrrhus, tempting him to revolt, xiii. 373.
Fabulæ, silentia antiquitatis excepe-runt, xii. 427.
Chrysippi et Chymicorum interpretationes, xii. 427, 428.
duplex parabolarum usus, xii. 430.
Fabyan, *character of his chronicle*, xi. 15, 25.
Facility, a vice of men in authority, xii. 114, 326.
Factions in a state, the breaking of, a remedy for discontentments, xii. 130, 381.
essay on Faction, xii. 254–256, 301, 367, 368.

Faculties of the mind of man threefold, hence three classes of written books, xi. 33.
Fœdera per Stygem pacta, xii. 439–441.
Fairley's case, xv. 99–103, 109.
Faith, confession of, xiv. 47–57.
Falinus, his reply to Clearchus, xiii. 333.
Fall of man, xiv. 51.
Fallacies, and the Elenches of them, xiii. 270–290.
Falsehood, the shame and wickedness of, xii. 84.
Montaigne on, xii. 83.
Fama omnis e domesticis emanat, xii. 264, 532.
soror Gigantum, interpretatio fabulæ, xiii. 9.
Fame, her pedigree, xii. 123, 379.
like a river, bears up things light and swollen, and drowns things weighty and solid, xii. 259, 369.
of learning, her flight slow without some feathers of ostentation, xii. 262.
Essay on, xii. 283–285.
sister of the Giants, xiii. 108.
the spur to virtue, xiii. 274.
good, like fire, xiii. 399.
Family, old, xii. 122, 323.
Farnaby, Thomas, *published a poem by Lord Bacon*, xiv. 115–118.
Faro, Katheren de, mother of Perkin Warbeck, xi. 202.
Fata, cur Panis sorores, xii. 444.
Fates, why sisters of Pan, xiii. 95.
Father, his authority over his family, xv. 197.
to the bough, son to the plough, xiv. 407; xv. 329.
Favour of law, what, xv. 225.
Favourites of Princes, xii. 167.
Fawcon, one of our pursuivants, xi. 149.
Fealty, xiv. 400.
Fee simple, estates in, xiv. 414, 415.
Felo de se, xiv. 244, 374; xv. 331.
Felony, cases of, xv. 326–329.
punishment, trial, and proceeding, in cases of, xv. 329–331.
Feme covert, xiv. 191, 193, 208, 209, 214, 216, 220, 224, 225, 247, 341, 342, 344, 350, 351.
Fennel-stalks, with which Prometheus stole the fire, xiii. 145, 148.
Feoffments, xiv. 416.
Ferdinando of Spain, xi. 181.
his wars in Granada, xi. 163.
his share in the execution of the Earl of Warwick by Henry VII. xi. 305, 306.
according to Sir James Mackintosh, xi. 306, 317.
his policy respecting Castile, xi. 340.
rumoured marriage with Madame de Fois, xi. 342.
his power strengthened by the death of Philip, King of Castile, xi. 348.
Ferdinando, Louis XI., and Henry VII., tres magi of kings, xi. 364.
Ferdinando and Isabella, send letters to Henry VII. to report the conquest of Granada, xi. 189.
make peace with Charles VIII. xi. 195.
proposed marriage, between their daughter Katherine, and Prince Arthur of England, xi. 277. — *See* Isabella.
Ferdinando the younger, King of Naples, xi. 239.
Ferula Promethei, xiii. 42, 46.
Fiatt, Marquis, his compliment to Bacon, xiii. 412.
Fides est obligatio conscientiæ unius ad intentionem alterius, xiv. 291.
Fines, after five years, to be final, to conclude all strangers' rights, xi. 141, 142.
the Statute of, xv. 180.
and recoveries, xiv. 197, 416, 417. — *See* Recoveries.
Fire, the invention of, by Prometheus, xiii. 144–156.
Firmarius, force of the word, xv. 41, 42.
Fishing on the coast of England, rights of the Dutch to, xi. 346.
Fistula Panis, quid, xi. 445.
Fitz-gerard, Thomas, Earl of Kildare, rebels against Henry VII. xi. 75, 76.
Fitzwater, Lord, favours Perkin Warbeck, xi. 212.
apprehended, tried, and beheaded, xi. 223.
Fitzwilliam's case, xv. 81, 85.
Flammock, Thomas, leader of the Cornish rebels against Henry VII. xi. 264.

Flammock — *continued.*
taken prisoner at Blackheath, xi. 273.
executed at Tyburn, xi. 274.
Flanders, rebels against Henry VII. assemble in, xi. 81.
rebels against Maximilian, xi. 150.
speech of the French ambassadors concerning, xi. 159.
and England, man and wife, xi. 219.
English merchants ordered to leave by Henry VII. xi. 222, 244.
trade resumed, xi. 258, 260.
Flattery among lovers, xii. 110, 335, 336.
of a man's self, xii. 171.
Flower de luces, non laborant neque nent, xiii. 367.
Flowers commended for gardens, xii. 236–239.
sweet-scented, xii. 238.
of spring, why sacred to the infernal deities, xiii. 89.
Flux of matter perpetual, xii. 274.
Foderingham, burial-place of Cecile, Dutchess of York, xi. 239.
Fois, Madame de, report of her marriage with Ferdinando of Castile, xi. 342.
Followers and Friends, essay on, xii. 247–249, 294–296, 364–366.
Fool learns less by the wise than the wise learn by fools, xiii. 363.
how different from a wise man, xiii. 381.
hath said in his heart, There is no God, xiv. 92, 93.
more of, than of the wise, in human nature, xii. 116.
Forfeiture, xiv. 192, 210.
of lands, xiv. 406–409.
women advanced by their husband, or his ancestors, not allowed to alienate the lands, by Statute of 11 Henry VII. xi. 242.
of chattels, xiv. 428.
Forget him awhile, and he will remember himself, xiii. 357, 358.
Forgiveness of our enemies commanded, but not of our friends, xiii. 371.
Formalities, use of, xii. 164–166, 346–348.
Formedon, xiv. 194, 197.
Formularies and elegancie 37.
Preface, xiv. 9–18.
Formulæ, xiv. 32.
Forrest, Myles, one of the of the princes in the 214.
Fortitude, he who wante worship Friendship, xii.
Fortune, *the advancement* high, how to bear one 111–115, 324–327.
is like a market, xii.
essay on, xii. 215–218
the mould of, is in hands, xii. 215, 358
blind, but not invisibl
her way is like the in heaven, *ib.*
her two daughters, and Reputation, xii
wise men attribute t to, *ib.*
Fouldrey, in Lancashire, Ireland land at, xi. 87.
Fountains in gardens, of xii. 241.
Foxe, Bishop of Dures counsellor, xi. 64.
subsequent promotio
ambassador to Scotla
Lord Privy Seal to xi. 259.
strengthens Norha against the Scot
with Hialas to treat IV. xi. 278.
his meeting with Ja Melrosse, xi. 299.
busied about the n Prince Arthur wit of Arragon, xi. 31
negotiates the marr Princess Mary wi Prince of Castile,
France, all noblesse or pe 145.
Henry VII. of Eng the kingdom, xi.
Henry VII. his ca with, and prepa 177.
why overmatched b xii. 180.
the League of, xii. 2
king of, his retort bassador of the e 278.

France — *continued.*
statute of Edward III. that the realm of England should not be subject to the seigniory of France, xv. 211, 212.
English title to the crown of, *ib.*
— *See* French.
Francis I. in disguise; the peasant's retort, xiii. 346.
Frankalmoigne, xv. 65, 74.
Frank-fee, xiv. 194.
Frankfort, *treaty of, between Maximilian and Charles VIII.* xi. 155.
Franklin, *the apothecary, concerned in the murder of Overbury, his dying disclosures*, xii. 11, 12.
Frank-marriage, xiv. 201; xv. 84, 90.
Frankness of dealing, a mark of ability, xii. 95.
Frank-tenement, xiv. 336.
Freemen, *the king's, summoned to his Great Council*, xi. 372.
Freewill in thinking, some affect, xii. 81.
Freethinking, xii. 81.
Freine and Dillon's case, xv. 85. — *See* Chudleigh's case.
Freme, to, xiv. 31.
French, feeling of the English towards, xi. 125, 126.
well acquainted with the courage of the English, xi. 127.
are wiser than they seem, the Spaniards seem wiser than they are, xii. 164, 346.
army, often ill provided, by reason of negligence, xiii. 243.
pay less reverence to the sacrament than the Spanish, xiii. 365. — *See* France.
Friends and followers, essay on, xii. 247–249, 294–296, 364–366.
Friendship, essay on, xii. 165–174, 336, 337.
three main fruits of,
peace in the affections, xii. 165–170.
support in the judgment, xii. 170–173.
aid on all occasions, xii. 173–175.
not to be lost for another man's wit, xiii. 398.
there is little in the world, and least of all between equals, xii. 249, 295, 366.
Frion, Stephen, an emissary of Margaret of Burgundy, xi. 208.
Frion — *continued.*
sent by Charles VIII. ambassador to Perkin Warbeck, xi. 208.
Perkin guided by him, xi. 236.
Frowicke on the prerogative, xiv. 852.
Fulforde's march to the relief of Exeter besieged by Perkin Warbeck, xi. 287.
Fuller, *his remark concerning Maygames in harvest time*, xii. 61, 62.
Funambulos, xiii. 298, 299.

G.

Gabato, Sebastian, sails with three ships beyond Labrador, xi. 294.
Gagvien, Robert, Prior of the Trinity, ambassador from Charles VIII. to Henry VII. xi. 158.
his speech to the council, xi. 159–165.
libels Henry VII. in Latin verse, xi. 172.
Gains, light, make heavy purses, xii. 256, 293, 361.
Galba, his dying speech, xii. 85, 317.
omnium consensu capax imperii, nisi imperasset, xii. 115, 327.
his saying, "legi a se militem non emi," xii. 130.
prophecy of Tiberius respecting, xii. 204.
saying, respecting the licentiousness of his time, xiii. 344.
Galeot, James, the French general killed at the battle of St. Albans, xi. 127.
Gambling by servants, statute of Henry VII. respecting, xi. 334.
Gaol-delivery, commission of, xiv. 386.
Gaols, patents of, *reannexed to the sheriffwicks* by Henry VII. xii. 333.
Garcilazzo de Viega, xii. 215.
Gardens, essay on, xii. 235–245.
passages resembling, in the Winter's Tale, xii. 235–237.
God Almighty first planted a garden, xii. 235.
for all the months in the year, *ib.*
flowers and fruits commended, xii. 235–239.
dimensions required, xii. 239.
subdivisions of, *ib.*
alleys and hedges, xii. 239, 240.
fountains, xii. 241, 242.

Gardens — *continued.*
heaths, xii. 242, 243.
side grounds, xii. 243, 244.
aviaries, xii. 245.
Gardiner, Bishop, his saying concerning Protestants, xiii. 332.
Garter, order of the, sent by Henry VII. to Alphonso, eldest son of Ferdinando of Spain, xi. 199.
given to Philip King of Castile by Henry VII. xi. 347.
Gascoign, wines and woads of, to be brought only in English bottoms, xi. 145.
Anjou and Gascoigne, united to England in the reign of Henry II. xv. 238.
subjects of, naturalized in England after the provinces separated, xv. 239–246.
Gascoigne *v.* Pierson, case of, xv. 273.
Gate-vein, xi. 259.
Gaunt, rebels against Maximilian, xi. 150.
submits, xi. 186–189.
Gavelkind land, not escheated for felony, xiv. 407.
Gellius, A., on verbal distinctions, xii. 165, 347.
Gemes, brother of Bajazet, xi. 164.
General words shall never be stretched to a foreign intendment, xiv. 203.
Genitings, xii. 237.
Genitories of priests, why supposed to be adored by the early Christians, xiii. 373.
Gentlemen, the more gentlemen, ever the lower books of subsidies, xi. 143.
if too many in a state, the Commons will be base, xii. 179, 377.
Georgica Intellectus, xiii. 293.
George, St., his fields, Henry VII. encamped in, xi. 270.
Giants, brothers of Fame, xiii. 108.
Gibson, Dr., xiii. 395.
Gift, of chattels, xiv. 425.
Gigantum soror Fama, xiii. 9.
Gilbert, Sir Humphrey, *his discovery of a new passage to Catai*a, xi. 295.
Gladius gladium juvat, xv. 122.
Gloucester, Statute of, xv. 36, 40, 41, 50, 51.
Gloucester, Richard Duke of, murders his nephews, xi. 246.
Goat's feet of Pan, xiii. 96,
God, a jealous God, xii. 86,
Indians have no nam
133, 338, 339.
no opinion of Him bet
wrong opinion, xii. 1
His image, what, xiii.
what Simonides thoug
376, 377.
His nature, xiv. 47.
His monarchy over t
xv. 198.
the Word typified by
liberating Prometh
156.
Gold, exportation of, proh
Henry VII. xi. 146,
the emblem of durat
167.
tried with the touchst
with gold, xiii. 375.
and silver, the craft of
cation of, is felony, x
Golden branch, xiii. 167.
Goldenston, Thomas, Prior
church in Canterbury, se
sador to Charles VIII. xi
Goldingham, to Lord Leice
find posts, and the cou
find you railing, xiii. 391
Gondebault *sent ambassador milian to Henry VII.* xii. 192.
Gondomar, Count, xiii. 402
his story to Bacon, o
rat, xiii. 394.
discoursing in Latin to
xiii. 412.
on compliment, *ib.*
Good, strongest at first; ill,
uance, xii. 160.
and evil, colours of, xiii
Goodness, and goodness c
essay on, xii. 118–
319.
Philanthropia of the
xii. 118, 318.
Charity of theologians,
found even among t
xii. 118.
both a habit and a di
xii. 119, 319.
Gordon, Lady Catheren, da
the Earl of Huntle
consents to her marr
Perkin Warbeck, xi.
seized by Henry VI
Michael's Mount, xi.

Gordon, Lady Catheren — *continued.*
called the White Rose, xi. 298.
Gorge, Mr., Bacon's saying respecting, xiii. 410.
Gorgones, Bella significant, xii. 450, 451.
Gorgons, meaning of the fable, xiii. 102, 103.
Government, four pillars of, xii. 125, 380.
Grææ, meaning of the fable, xiii. 104.
proditiones sunt, xii. 452.
Græcia, designs of Charles VIII. on, xi. 162.
Granada, conquered from the Moors, xi. 189.
Granson, battle of, xiii. 245.
Grant, an argument of property, xv. 48.
not countermandable, xiv. 241.
what the king may not grant by charter, xv. 12–16.
the king's grants shall not be taken to a special intent, xiv. 231.
by a common person, shall be extended as well to a foreign as to a common intent, *ib.*
distinguished from declarations, xiv. 240, 241.
not allowed of without a foundation of interest in the grantor, xiv. 240.
Grasshopper, Tithonus, why changed into, xiii. 720, 721.
Gratiosi, or favourites of princes, xii. 265, 301.
Grave, raising of siege of, xiii. 346.
Gray's Inn, *Bacon a reader at*, xiv. 159–161.
his obligations to, xv. 30.
Great place, essay on, xii. 111–115, 324–327.
its servitude, xii. 111, 324.
dangers and discomforts, xii. 112, 325.
all rising to, is by a winding stair, xii. 115.
Greeks scoffed at, for their want of antiquity, by an Egyptian, xiii. 375.
their mythology as explained by Max Müller, xii. 409–415.
by Bacon, xii. 410; xiii. 75–81.
Greese of the quire, xi. 282.
Gregory the Great, his attempt to extinguish heathen learning, xii. 275.
Greville, Sir Fulke, of precedents in Parliament, xiii. 370.
likened himself to Robin Goodfellow, xiii. 377.
Grindall, Archbishop, physicians in England have only the power to bind and loose, xiii. 396.
Grottas for estivation, xii. 233.
Guildford, Sir Richard, sent by Henry VII. to Kent after Perkin Warbeck's rebellion, xi. 237.
Guincamp, *siege of, by Charles VIII.* xi. 149, 176.
Guise, Henry Duke of, the greatest usurer in France, why, xiii. 359.
Gyngham, *the siege of*, xi. 149, 176.

H.

Hacket, the fanatic, notes by Bacon in Camden, respecting, xii. 52, 53.
Hadrian, Cardinal, his correspondence in Latin with Henry VII. xi 363.
Hæres est nomen juris, filius est nomen naturæ, xiv. 233.
Hæreses, duplex causa earum, xiv. 78.
Hæresium, quæ potestatem Dei minuunt, tres gradus, *ib.*
Hair, why Pan covered with, xiii. 95, 96.
Hale, Sir Matthew, *his Jurisdiction of the House of Lords*, xi. 370.
Half blood, xiv. 234.
Halfpenny's case, xiv. 300.
Hall, *merit of his History*, xi. 14, 25.
Hammes, Sir Robert Curson, governor of, xi. 330.
Handmill, a prudent king should be able to grind with a, xii. 149.
Hannibal, his saying of Fabius and Marcellus, xiii. 347.
of Fabius Maximus, xiii. 374.
Hanno, swore by the same gods who had punished his former perjury, *ib.*
Harbinger, to a guest, xiii. 359.
Hare's flesh, the Moors eat none, xiii. 374.
Haste, Stay a little, that we may make an end the sooner, xiii. 402; xiv. 23.

Hastings, Lord, an enemy to the Queen Dowager, xi. 79.
Hatton, Lord Chancellor, his pun on lying, xiii. 345.
Hault justice may be granted by the king to a subject, xv. 331.
Hawks, stealing certain kinds, felony, xv. 328.
Hay, Sir Alexander, answers to questions propounded by, touching the office of constable, xv. 339–346.
Hayward, Dr., Bacon's jest respecting his plagiarisms from Tacitus, xiii. 341.
Heads, whether great, or little, have the best wit, xiii. 349.
Heale, Serjeant, case of, xv. 232.
Health, essay on the regiment of, xii. 188–190, 342, 343.
Hearne, Thomas, *his edition of Camden's Annals of Queen Elizabeth*, xii. 47, 48.
Heart, no receipt can open it, but a true friend, xii. 167.
Heaths in gardens, xii. 242, 243.
Hector, Dr., to the dames of London, xiii. 288.
Hedera, cur Baccho sacra, xiii. 39.
Hedges for gardens, xii. 240.
Helena, he that preferred her quitted the gifts of Juno and of Pallas, xii. 111, 336.
Helps to the intellectual powers, xiii. 295–304.
Henningham, Henry VII. entertained at, by the Earl of Oxford, xi. 327.
Henricus Princeps Walliæ, elogium Baconi de eo, xii. 15–17.
obiit, 6° Nov. anno 1612, xii. 15.
mors ejus veneno falsò relata, xii. 17.
Henry VI. his canonization, xi. 348.
pointed out Henry VII. then a lad, as to be his successor, xi. 365.
Henry VII. History of, xi. 45–365.
preface, xi. 13–40.
text, xi. 16–18.
inaccuracies of, xi. 18.
omissions in, xi. 18.
Latin translation of, xi. 19.
style of Bacon's History of, xi. 20.
portraits of, xi. 38, 39.
his character compared with that of James I. xi. 24, 25.
weaknesses and errors, xi. 26, 27.
Henry VII., History of—
titles to the crown at
sion, xi. 47–51.
crowned on Bosworth
49.
journey to London, x
entry into the city, xi
coronation, xi. 54–56.
body-guard, xi. 56, 5
first parliament, xi. 5
pardons and attainde
63.
marriage, xi. 65.
measures against the
der Lambert Symn
91.
second parliament, xi
relations with France
policy respecting Br
97–100, 128, 129, 35
journey to York, xi.
James III. of Scotlan
assistance, xi. 138.
engages Adrian de
his service, xi. 139.
the best lawgiver to
after Edward I. xi
—*See* Statutes.
replies to the overtu
French ambassador
ing the kingdom
xi. 170.
treaty with Maximilia
summons parliament
enth year, xi. 176,
revives benevolences,
receives letters from
and Isabella of Spa
sails from Sandwich
xi. 194.
overtures of peace fr
VIII. sent by Lo
xi. 194, 195.
peace of Estaples, xi.
imposture of Perkin
xi. 199–304.
his covetousness, xi.
324, 336, 357, 358.
entertained at Latha
Thomas Stanley, x
enters into a league
Italian States agai
VIII. xi. 238, 275.
mode of borrowing
his subjects, xi. 26
rebellion in Cornwall
brings Perkin Warbe
don, xi. 283–293.

Henry VII., History of — *continued.*
interview with Archduke Philip at Calais, xi. 308.
declines to join in a crusade, xi. 314.
marries his daughter Margaret to James IV. of Scotland, xi. 322.
death of his queen, xi. 324.
oppression of his subjects, xi. 325–329.
harshness to the Earl of Oxford, xi. 327, 328.
parliament summoned in the nineteenth year of his reign, xi. 332–336.
policy at the death of Isabella, queen of Castile, xi. 336–338.
contemplates a marriage with the young Queen of Naples, xi. 339.
interview with Philip, King of Castile, at Windsor, xi. 344–347.
seeks Lady Margaret, Dutchess Dowager of Savoy, in marriage, xi. 349.
marriage protracted by reason of the king's illness, xi. 350, 351.
his purpose of marriage with Juanna, Queen of Castile, xi. 351.
claim to the government of Castile, xi. 350.
his vast treasures, xi. 353.
marriage treaty between his daughter Mary and Charles Prince of Castile, *ib.*
the Salomon of England, xi. 354.
dies at Richmond, *ib.*
his character, xi. 355–365, 379–389.
his birth at Pembroke, xi. 365.
tomb at Westminster, *ib.*
his treatment of his nobles, xii. 144.
his secrecy in matters of state, xii. 149.
his law respecting houses of husbandry, xii. 180.
Henry VIII. his birth, xi. 172.
beginning of a history of his reign, xi. 33–40, 395–397.
his divorce from Katherine of Arragon, xi. 320.
undertaken by Bacon at the request of Prince Charles, xi. 393.
Henry VIII. — *continued.*
his purchases of Tournay and Bulloigne, xiii. 241.
Henry, Duke of York, son of Henry VII. contracted to the Princess Katherine of Spain, xi. 322.
Henry, Prince of Wales, memorial of him, xii. 19–22.
possibly intended to be sent to De Thou, xii. 11.
died on the 6th Nov. 1612, xii. 19.
rumour of poison at his death unfounded, xii. 22.
Henry III. of France, effect of his league against the Protestants, xii. 124.
Henry IV. of France, to the Count of Soissons, xiii. 328.
called King of the Faith, xiii. 390.
on a war against the Protestants, *ib.*
to an orator, xiii. 412.
Heraclitus, his saying, that dry light is the best soul, xii. 171; xiii. 158, 384.
lumen siccum optima anima, xiii. 54.
Herbert, George, Bacon's translation of the Psalms dedicated to, xiv. 122.
Hercules, sailing in an earthen pot, xii. 94.
interpretation of the fable of his fight with Achelous, xiii. 136, 137.
liberator of Prometheus, xiii. 154.
his labours, xiii. 216.
an image of God the Word liberating man, xiii. 156.
cum Acheloo pugnat, xiii. 35, *ib.*
liberator Promethei, xiii. 44, 50, 52.
Hereafter, in Statute of Uses, xiv. 325.
Hereditament, in Statute of Uses, *ib.*
Heresies and schisms the greatest scandals, xii. 87.
how to be avoided, xii. 89, 315.
the origin of, xii. 276.
twofold origin of, xiv. 94.
three degrees of heresies denying the power of God, *ib.*
trial and proceedings in cases of, xv. 334.
Heretics in England, dealt with by Henry VII. xi. 315.
one converted by him, *ib.*

Herlackenden's case, xv. 41, 44, 46, 47, 51.
Herne, a mercer, one of Perkin Warbeck's counsellors, xi. 283.
Hermogenes, the rhetorician, xii. 225.
Hialas, Peter, ambassador to Henry VII. from Ferdinando and Isabella, xi. 277.
employed by him to treat with James IV. of Scotland, xi. 278.
Hieroglyphica literis antiquiora, xii. 431.
Hieroglyphics came before letters, parables before arguments, xiii. 80.
High constable, origin and election of, xiv. 376; xv. 339.
Hill and Graunger's case, xv. 80.
Hippomenes, his race with Atalanta, xiii. 142, 143.
cum Atalantâ, xiii. 40, 41.
Historian, *his office compared with that of a judge summing up*, xi. 30.
History of the reign of Henry VIII. xi. 33–40, 395–397.
of the reign of Henry VII. xi. 45–365.
Hitcham, Sir Robert, xiii. 411.
Hog and Bacon, a thief's pun, xiii. 415.
Holinshed, *character of his History*, xi. 14, 25.
Holy Ghost, the power of, xiv. 54.
in form of a vulture, xii. 91, 316.
Holy War, advertisement touching an, xiii. 191–218.
Homage, xiv. 400.
and tenure, and homage liege, xv. 217.
Homer, his prophecy of the Roman empire, xii. 203.
Homicide, xiv. 373, 374.
the king's suit by indictment, no longer to await the year and day allowed by way of appeal, xi. 132.
by misadventure, xiv. 220.
by negligence, *ib.*
seipsum defendendo, xiv. 192, 213, 216, 217.
Homo opus Promethei, xiii. 42.
veluti centrum mundi, xiii. 44.
res omnium maximè composita, xiii. 45.
microcosmus, *ib.*
Honour hath three things in it, xii. 208, 350.
Honour and Reputation, essay on, xii. 263–265, 299–301.
Honour — *continued.*
gained upon anothe quickest reflexion, x
degrees of sovereign xii. 264, 265, 300.
conditores imperioru 264, 300.
legislatores, *ib.*
liberatores, *ib.*
propugnatores imperi
patres patriæ, xii. 265
degrees of honour in xii. 265, 300, 301.
participes curarum, 300.
duces belli, xii. 265, 3
gratiosi, *ib.*
negotiis pares, *ib.*
a soldier's, should be of web, xiii. 366.
Hope left at the bottom of P box, xiii. 145, 146.
kept by Alexander for xiii. 363.
a good breakfast, but a per, xiii. 391.
earthly, meditation on, 86, 87.
all to be employed upon to come, xiv. 88.
Horns of Pan, meaning 95.
Horsestealing, xiv. 238.
Hortensius, idem manebat idem decebat, xii. 225.
Hosea on the governmen Jews, xiii. 211.
Hostages to Fortune, wife dren are, xii. 101, 321.
Houland, Mr., to a student ing, xiii. 396.
Houses of husbandry, sta Henry VII. to maintain, xii. 180.
Howard, Lord Henry, Non lus, xiii. 371.
his reasons for desirin Rome, xiii. 385, 386.
concerning Caroon, th agent, xiii. 395.
Hucks *and foldings, worn in* xi. 297.
Hundred Courts, county c vided into, xiv. 377.
sheriff judge of, xiv. 37
institution of, xiv. 379.
Hungary, King of, who took prisoner, to the Pope, xiii

Hunston *v.* the Bishop of Ely, case of, xv. 293, 309.
Hunt and Chappel's case, xv. 168.
Hunters, Pan why the god of, xiii. 97, 98.
Huntley, Earl of, proposed marriage of his daughter to Perkin Warbeck, xi. 250.
Husbandry, a profitable profession for rich men, xii. 200.
Husbands and Wives, xii. 101–103, 321, 322; xiv. 191, 193, 208, 209, 214, 216, 220, 224, 225, 247, 341, 342, 344, 350, 351.
women never complain of husbands of their own choosing, xiii. 284.
Hydra's teeth sowed by the king, xi. 145.
Hyperbole, speaking in a perpetual, comely in nothing but in love, xii. 110, 335.
Hypocrisy of Atheism, xii. 133.
Hypocritæ, xiv. 74.
Hypocrites detected in the works of mercy, xiv. 89.
compared with heretics, xiv. 90.
characteristics of, xiv. 90, 91.

I.

Icarus, meaning of the fable, xiii. 130, 131, 157.
interpretatio fabulæ, xiii. 29, 30, 53.
Idolatry, what, xiii. 198.
of the Jews and of the heathen, xiii. 211.
Idols, Henry VII. vexed with, xi. 290.
Ifs and Ands, to qualify words of treason, xi. 228.
Ignis a Prometheo inventus, xiii. 42.
Ignorance, trick to make it seem judgment, xii. 165, 347.
Ill is strongest in continuance, good at first, xii. 160.
Image of God, what, xiii. 210.
scriptural authority for images, xiii. 372, 373.
Imitation is a globe of precepts, xii. 113, 326.
Impatience of audience, xiv. 34.
Impeachment of waste, Bacon's argument on, in the Exchequer Chamber, xv. 35–61.
derivation of the term, xv. 53, 54.
Imports, prohibition of foreign manufactures, xi. 333.
Impostores et hypocritæ, xiv. 75, 76.
Impostors and hypocrites, characteristics of, xiii. 90, 91.
Impostura tria genera, xiv. 75.
Imposture, the meaning of the fable of Erichthonius, xiii. 132.
three kinds of, xiv. 91.
Imprisonment for breach of a decree, xv. 352, 353.
In capite, tenure intended by law, xv. 63, 64, 69, 70.
In criminalibus, sufficit generalis malitia intentionis, cum facto paris gradûs, xiv. 244.
In jure, non remota causa, sed proxima spectatur, xiv. 189–193.
Inbowed windows, xii. 233.
Incaes of Peru, their government, xiii. 198.
Incarnation, the, xiv. 52, 53.
Incertainty of intendment, xiv. 206.
Indies, West, burnings by lightnings there, xii. 274.
former inhabitants perished, how, *ib.*
tortures the Indians will undergo, xii. 214.
Indian emblem, the hand on the centre of a bladder, xi. 268.
Industry, its gains sweet, why, xiii. 286.
Infant, fines levied by, error upon, xiv. 249.
contracts by, xiv. 251.
may be seized to a use, xiv. 341.
may limit a use, xiv. 350.
Infanta, *proposed marriage of Prince Charles to the*, xiii. 175.
Infantry, strength of an army consisteth in, xi. 144.
the nerve of an army, xii. 179, 377.
Infirmitas culpabilis, excuseth not, xiv. 217.
Infistuled, xiv. 31.
Informations penal, how evaded, xi. 146.
Ingrossing, xii. 128.
Inheritance, maternal ancestor, when preferred to the paternal, xiv. 191.
the nature of an, xv. 37.
Injunctions, xv. 355–357.
Innocent VIII., Pope, embassy to, from Henry VII. xi. 94.

Innocent VIII. — *continued.*
sends a cap of maintenance to Henry VII. xi. 281, 282.
Innovations, essay on, xii. 160, 161.
Inquisitive people commonly envious, xii. 104.
Inrolment, statute of, xiv. 322.
Insipiens, dixit in corde suo, Non est Deus, xiv. 76.
Insolent, the most subject to envy, xii. 107.
Instauration, the work Bacon himself most esteemed, xiii. 186.
his motive in writing, xiii. 188.
Institutes of Justinian, xiv. 172.
Insurrection in Yorkshire against the commissioners appointed by Henry VII. to raise a subsidy, xi. 134.
Intellectual powers, helps to the, xiii. 295–304.
Intent, malicious, xiv. 244.
Intention in criminal cases, xiv. 192, 219, 220.
Intercursus magnus, treaty between Henry VII. and the Archduke Philip, xi. 260.
Intercursus malus, treaty between Henry VII. and Philip King of Castile, xi. 260, 346.
Interlocutoria sententia revocari potest; definitiva non potest, xiv. 258.
Interpretatio verborum, quæ vitio caret, accipienda, xiv. 203.
quæ omninò recedit a literâ, divinatio, xiv. 204.
Interpretation, rules of, at law, xiv. 198–210.
Intestate, why men die, xii. 398.
Intrusions, informations of, falsely charged by Empson and Dudley, xi. 326.
Invidia, translated discontentment, xii. 108.
apud excellentes artifices dominatur, xiii. 29.
Iphicrates, his oath by the river Styx, xiii. 91.
sacramentum ejus per Stygem, xii. 440.
of taking security from the Lacedæmonians, xiii. 358.
Ira hominis non implet justiciam Dei, xii. 91, 316.
Ireland, Simnell's rebellion in, xi. 74–84.
Perkin Warbeck makes a second vain attempt to raise rebellion, xi. 243.
Ireland — *continued.*
quieted by Sir E
commission, xi. 2
Henry VII. attempt
English manners.
few cases of Uses
300.
subject to English
ter of King John
Henry VIII. first st
xv. 244.
Irish rebel, petitioned t
in a withy, xii. 214.
Isabella, Queen of Casti
xi. 336.
policy of Henry VI
xi. 336, 337.
her saying conc
manners, xii. 257
of a man of good p
350. — *See* Ferdi
Ita quod, xv. 79.
Italians, compositions o
taken by the kin
make little differe
children and ne
xii. 100, 323.
Italy, all noblesse or p
145.
policy of Henry VI
xi. 168.
Itch and ease can no
xiv. 26.
Iterations are commonly
xii. 162, 334.
Ivy, why sacred to B
141.

J.

James I., *whether Ba*
History of Henry
ter him, xi. 21–3
his alterations in B
script of the re
VII. xi. 48, 55,
his dependence on
Commons for s
224–227.
sayings to his par
388–390.
his answer to a boo
dinal of Evereux,
of the provincial
xiii. 389.
on residence in the
400, 401.

James I. — *continued.*
anecdotes of, xiii. 401, 402.
appoints Mitchell to a new patent office; the proceedings thereupon, xv. 251–256.
James III. of Scotland, Henry VII. sends an embassy to, xi. 96.
his death, xi. 137.
killed at Bannocksbourn, xi. 139.
James IV. of Scotland, devoted to France, xi. 181.
Henry VII. declares war against him, xi. 184, 185.
his reception of Perkin Warbeck, xi. 244–250.
invades Northumberland, xi. 250–258.
again invades England, and besieges Norham Castle, xi. 275.
retires before the Earl of Surrey, xi. 276.
Hialas sent by Henry with proposals of peace, xi. 277.
refuses to give up Perkin, xi. 279.
dismisses him, xi. 281.
demands reparation for the murder of the Scots at Norham, xi. 298.
makes peace with Henry VII. xi. 300.
marries Margaret, daughter of Henry VII. xi. 322.
Jason the Thessalian, xiii. 235.
of justice, xiii. 357.
Jermyn and Askew's case, xv. 88.
Jest, some subjects privileged from, xii. 192, 345.
Jesuits, cunning of, xii. 154.
presence of in England, is treason, xv. 321, 322, 328.
aiding and relieving, a case of Præmunire, xv. 332, 333.
Jews, their idolatries, xiii. 211.
Joan, or Juanna, daughter of Ferdinando of Spain, wife of Philip king of Castile, xi. 347.
her marriage with Henry VII. of England thought of, xi. 351.
dies insane, xi. 347.
John a Chamber, heads the rising in Yorkshire and Durham against Henry VII. xi. 136.
hanged at York, *ib.*
John, king of Arragon, mortgages Ruscignon and Perpignian to France, xi. 195.
Johnson, Dr., three things material in sickness, xiii. 383.
Joint tenants, xiv. 243.
Jones *v.* Ecks, case of, xv. 273.
Joseph, Michael, a farrier of Bodmin, leader of the insurrection in Cornwall against Henry VII. xi. 264.
taken prisoner at Blackheath, xi. 273.
executed at Tyburn, xi. 274.
Juanna. — *See* Joan.
Jubilee at Rome, A. D. 1500, xi. 312.
Judah and Issachar, the blessing of, will never meet in one state, xii. 179, 377.
Judges, their office is, jus dicere, not jus dare, xii. 265, 370.
should be more learned than witty, more reverend than plausible, more advised than confident, *ib.*
the unjust, is the capital remover of landmarks, xii. 266, 370.
their principal duty, to suppress force and fraud, *ib.*
must beware of harsh constructions, xii. 267, 371.
ought to have regard to time as well as matter, xii. 267.
ought in justice to remember mercy, xii. 267, 371.
their parts in hearing causes are four, *ib.*
conduct towards advocates, xii. 268, 372.
in relation to the sovereign, xii. 269, 270, 373.
subject to the king's prerogative, xii. 392.
good fortune tellers, xiii. 397.
grounds on which error may be assigned, xiv. 246.
of assize —
in place of the judges in eyre, xiv. 384.
circuits of, xiv. 385, 391.
business of lessened, *ib.*
five commissions of, xiv. 386.
attended by justices of the peace and the sheriffs, xiv. 392.
the twelve, compared to the twelve lions under king Solomon's throne, xv. 259. — *See* Judicature, Justices.
Judicature, essay on, xii. 265–270, 370–374.

Judicature — *continued.*
duties of judges —
towards the parties sueing, xii. 266, 267, 370, 371.
towards advocates and counsel, xii. 267, 268, 371, 372.
towards clerks and ministers, xii. 268, 269, 372, 373.
towards the sovereign, xii. 269, 270, 373.
Julius II., Pope, requested to canonise Henry VI. of England, xi. 338.
Julius III., Pope, sayings of his, xiii. 331.
Julius Cæsar. — *See* Cæsar, Julius.
Juno, courted by Jupiter in the form of a cuckoo, interpretation of the fable, xiii. 121.
a Jove sub formam cuculi petita, xiii. 21.
Jura sanguinis nullo jure civili dirimi possunt, xiv. 233–235. — *Vide* Affinitas.
Juramenta irrevocabilia, xii. 439, 440.
Jurisdiction, stir not questions of, xii. 114, 326.
Jury may take knowledge of matters not within the evidence, xiv. 210.
Jus accrescendi, xiv. 224.
in re, Jus ad rem, xiv. 287.
triplex, precarium, fiduciarium, legitimum, xiv. 291.
publicum, divided into four parts, xv. 319.
Justices of the peace, xiv. 382–384; xv. 378, 379.
statute of Henry VII. respecting, monitory and minatory, xi. 146.
itinerant in Wales, jurisdiction of, xv. 377, 378. — *See* Judges.
Justinian's Institutes, xiv. 172.
Justs and tourneys, xii. 211, 212.
Juventus, florem ejus inter antiquos non deciduum, xiii. 47.

K.

Kalyke, *night*, xii. 412, 414.
Katharine, daughter of Ferdinando and Isabella, xi. 277, 316.
her ill-omened marriage with Arthur, son of Henry VII. xi. 305, 306, 316.
her dowry, xi. 319.
Katharine — *continued.*
whether bedded, xi. 320, 321.
Kelley, the alchymist, Sir Edward Dyer's story of, xiii. 382, 383.
Kendal, Prior of St. John's, in Henry VIIth's reign, xi. 259.
Kent, Perkin Warbeck lands near Sandwich, xi. 236.
never conquered, xi. 266; xiv. 392, 393.
custom of, Gavelkind, xiv. 396.
Earl of, firm to Henry VII. against the Cornish rebels, xi. 266, 267.
Countess of, her case, xv. 301, 303.
Kentish men loyal to Henry VII. against Perkin Warbeck, xi. 236.
Cornish rebels desire to join with them against Henry VII. xi. 266.
Kildare, Earl of, Deputy of Ireland, xi. 233.
sent prisoner to England by Sir Edward Poynings, *ib.*
his attainder reversed, xi. 297.
King, essay of a, xii. 387–395.
whether by Bacon, xii. 385.
a mortal god on earth, xii. 387.
nature and exercise of his prerogative, xii. 390–395.
cannot be seized to a use, xiv. 339.
may be cestui que use, xiv. 343.
may declare a use, xiv. 349.
has a double capacity, in his natural body, and in his body politic, xv. 230–232.
his right shall not be questioned, unless he be a party to the cause, xv. 264, 267.
hath privileges in his suits, which the subject hath not, xv. 266.
how made party to a suit, xv. 267.
his prerogatives in sueing, xv. 277, 278.
can create an office de novo, xv. 299.
Kings not envied but by kings, xii. 106.
have few things to desire, and many to fear, xii. 140, 328.
sometimes set their hearts on toys, why, *ib.*

Kings — *continued.*
great conquerors superstitious in their latter years, xii. 141, 328.
often will contradictories, xii. 142.
dangers to, from their neighbours, *ib.*
wives, xii. 143.
children, *ib.*
prelates, xii. 144.
nobles, *ib.*
second nobles, xii. 145.
merchants, *ib.*
commons, *ib.*
men of war, xii. 146.
resemble heavenly bodies, *ib.*
triumvirate of, Henry VIII. Francis I. and Charles V. xii. 142.
their favourites, xii. 167.
and their kingdoms, man and wife, xiii. 85.
Kingdoms, essay on the true greatness of, xii. 176–188, 376–378.
causes of their true greatness, xiii. 231–234.
King's Bench, institution and jurisdiction of, xi. 130; xiv. 376, 384, 385.
Knee-timber for ships, some men resemble, xii. 120, 319.
Knesworth, Mayor of London, fined 1400*l.* by Henry VII. xi. 352.
Knight-service, xiv. 399.
Knights-bannerets, twelve made by Henry VII. xi. 56.
Knights of the shire, xv. 66.
Knowledge is but remembrance, xii. 273.
itself is power, xiv. 95.

L.

Labrador, Sebastian Gabato sails to, xi. 295.
Labyrinth of Dædalus, meaning of the fable, xiii. 129–131.
Labyrinthus Dædali, xiii. 28–31.
Lacedæmonians taught by Epaminondas to speak long, xiii. 373.
Lambert Simnell the Pretender, xi. 71–91.
crowned at Dublin, xi. 85.
ends as a scullion in the royal kitchen, xi. 91.
Lamia the courtezan, xiii. 369.
Lampadiferorum certamina, in honore Promethei, xiii. 44, 51, 52.
Lancaster, House of, its title to the throne, xi. 48–51.
Landloper, xi. 201.
Lands. — *See* Property.
Languages should be learnt before travelling, xii. 137.
Languedoc, wines and woads of, to be imported only in English bottoms, xi. 145.
Lanthony, Prior of, made Chancellor of Ireland, xi. 232.
Laodiceans and lukewarm persons, xii. 88.
Latham, Henry VII. goes in progress to, to make merry with Sir Thomas Stanley, xi. 234, 235.
Latimer, Bishop, his proposal to enrich the king, xiii. 331.
Latin, law Latin, xiv. 305.
Latmos, *derivation of*, xii. 414.
Laud, Dr., likened hypocrites to the images in the groining of the church roof, xiii. 385.
Law will not intend a wrong, xiv. 203.
treatise on the use of, xiv. 373–432.
not written by Bacon, xiv. 363–368.
the most highest inheritance that the king hath, xv. 11.
the great organ by which the sovereign power doth move, xv. 200.
favour of, what, xv. 225.
of nature, *ib.*
Laws, to be treated of at large by the historian, why, xi. 147.
administration of penal laws, xii. 267, 371.
like cobwebs, xiii. 366.
cannot be made irrevocable, xiv. 254.
conflict of, *ib.* — *See* Statutes.
Laws of England, digest of, purposed by Bacon, xiii. 187; xiv. 157.
a preparation for the union of, xv. 317–334.
advantage of such union, xv. 317.
similarity between the English and Scotch, xv. 318.
Learning flourishes in the middle age of a state, xii. 280.
the art of unlearning, xiii. 378.

Lease, made by a parson, avoided by his successor, xiv. 189.
by heir of disseisor, xiv. 224.
by discontinuee, xiv. 226.
by coparceners, xiv. 236.
for years, xiv. 409.
for lives, xiv. 410.
Statute of Leases, 32 Hen. VIII. 28, xv. 180, 181.
Leets and law days, xiv. 480; xv. 340, 341.
Legacies, xiv. 431.
Legislatores, perpetui principes, xii. 264, 300.
Legum leges, xiv. 180.
Leicester, Lord, Sir Nicholas Bacon to, xiii. 390, 391.
Goldingham's saying to, on the enclosure of Cornbury Park, xiii. 391.
Leisure, dying at leisure, xiii. 387.
Lepanto, battle of, xii. 186; xiii. 194.
Lethe, runneth as well above ground as below, xii. 273.
Letters, from Henry VII. to the Mayor and Aldermen of London, xi. 198, 353.
others from Calais, xi. 310.
of attorney, xiv. 245.
Letters Patent, *granted to Michell by James I.* xv. 251–256.
Elizabeth foiled in the like grant to Cavendish, xv. 252, 253.
of subpœnas, xv. 274, 275.
of the writ of Diem solvit extremum, xv. 275.
of licenses of alienation, *ib.*
of the writ of Supplicavit supersedeas, *ib.*
of the writing of letters missive to York, *ib.*
of the writing of affidavits, *ib.*
of extents on statute staples, *ib.*
of making commissions to the delegates, *ib.*
of cursitors, for original writs, *ib.*
for measuring linen cloth, granted to John Butler, xv. 295.
of new inventions, xv. 300.
for leets, *ib.*
exemplifications of, xv. 371, 372.
Leucippus, his school charged with Atheism, xii. 132, 338.
Lewis XI. closeness his tormentor, xii. 169.
brought the crown out of ward, xiii. 370.
Lewis XII. to his Swiss mercenaries, xiii. 246.
Lewis Bowle's *case*, xv. 35.
Lex regia, xiv. 253.
talionis, xiii. 344; xiv. 291. — *See* Law.
Libels against the state, xii. 123, 379.
against Henry VII. xi. 231.
Liberatores imperiorum, xii. 264, 300.
Licences to collect for losses by fire and water, xv. 371.
Licet dispositio de interesse futuro sit inutilis, tamen potest fieri declaratio præcedens, &c., xiv. 240.
Licita benè miscentur, formula nisi juris obstet, xiv. 265.
Lie, Lord Chancellor Hatton's pun, xiii. 345.
why men love lies, xii. 81.
the shame of, xii. 84.
Light, dry, the best soul, xii. 171; xiii. 384; xiv. 62.
Lightnings in the West Indies, xii. 274.
Likenesses of children to relations rather than parents, xii. 100, 323.
Limitation, a statute of, passed by Henry VII. xi. 142.
Lincoln, Earl of, joins the Irish rebellion against Henry VII. xi. 81.
joins battle at Newark, xi. 88, 89.
Lingard, Dr., *on the restoration of the Queen Dowager's dower, by Henry VII.* xi. 73.
Lions under Salomon's throne, xii. 270; xv. 259.
Liver, sarza taken for disease of, xii. 166.
Livia, when met by naked youths, xiii. 350.
Loan from the City of London to Henry VII. of 4000*l.*, xi. 148.
loans borrowed from his subjects by Henry VII. xi. 261.
London, the city contributes 9000*l.* to a benevolence, in the 7th year of Henry VII. xi 184.
army of Henry VII. assembled at, for the invasion of France, xi 193.
letters sent by Henry VII. to the Mayor and Aldermen, announcing the peace of Estaples, xi. 198.
others from Calais, xi. 310.
bound for the performance of the treaty between Henry VII. and the Archduke Philip, xi. 260.

London — *continued.*
threatened by the Cornish rebels encamped at Blackheath, xi. 267, 270.
pays a benevolence of 5000 marks to Henry VII. xi. 335.
or country, for a residence, xiii. 401.
Long robe, persons of the, xi. 332.
Long, Roger, plots Perkin Warbeck's escape from the Tower, xi. 302, 304.
Longævitas, medicinæ ad prolongationem vitæ facientes, an veteribus notæ, xiii. 47.
Longevity, art of prolongation of life known to the ancients and lost, xiii. 150.
Lopez, Roderigo, tried for a conspiracy to poison Queen Elizabeth, xii. 54.
Lord of the Hundred, xiv. 379.
Lot, the, xiv. 37.
Louis XI. afraid of an able man, xi. 361.
his favourites, xii. 454; xiii. 107.
Ferdinando, and Henry VII., tres magi of kings, xi. 364.
Love compared with Envy, xii. 103.
essay on, xii. 109–111, 335, 336.
the stage more beholden to, than the life of man, xii. 109, 335.
in extravagance, the excesses of it, xii. 110.
the ruin of business, xii. 111, 336.
nuptial, friendly, wanton, xii. 111.
a crowd is not company, and faces are but a gallery of pictures, and talk but a tinkling cymbal, where there is no love, xii. 166.
without end hath no end, xiii. 360.
as though you should hereafter hate, xiii. 366.
love me little, love me long, xiv. 26. — *See* Cupid.
Lovell, Lord, his rebellion against Henry VII. xi. 67, 68.
sails to Flanders, xi. 82.
corresponds with Sir Thomas Broughton, *ib.*
lands at Fouldrey in Lancashire, xi. 87.
Lovell, Lord — *continued.*
mystery respecting his death, xi. 91.
Low Countries, excellence of their government, xii. 121.
cycle of weather observed in, xii. 276.
their wealth, xiii. 250, 251.
have the best mines above ground in the world, xii. 128.
Lowe's case of tenures, Bacon's argument in, xv. 62–77.
Lucrum, sive Atalanta, xiii. 40.
Lucullus, his winter residence, xii. 230.
his faction of Optimates, xii. 255.
Pompey's saying to, xiii. 351.
Ludlow Castle, scene of the death of Prince Arthur, son of Henry VII. xi. 320.
Ludovicus XI. Francorum rex, xii. 454.
Lullius Typocosmia, xiii. 302.
Lungs, flower of sulphur taken for the, xii. 167.
Lupus legum, xv. 180.
Lusen, near Greenwich, xiii. 401.
Luxembourg, Francis Lord of, ambassador to England from Charles VIII. xi. 157.
Lycull, abbot of, his case, xv. 290.
Lycurgus on equality, xiii. 335.
of the heroes of the heathen, xiii. 372.
Lysimachus, of Lamia the courtezan, xiii. 369.

M.

Machiavel, *object of "the Prince,"* xi. 21.
saying of, that Christianity had given good men up in prey to tyrants, xii. 119, 318.
on partizanship in princes, xii. 124, 379.
on force of custom, xii. 213, 356.
traduceth Gregory the Great, xii. 275.
on the sinews of war, xiii. 222, 243.
Mackintosh, Sir James, *his remarks on Bacon's History of Henry VII.* xi. 21, 22.

Mackintosh, Sir James — *continued.*
his charges answered, xi. 23–30.
his bad habit of altering Bacon's phraseology, xi. 325.
on the share of Ferdinand of Spain in the execution of the Earl of Warwick by Henry VII. xi. 306, 307, 317.
Madden, Sir Frederic, *on Perkin Warbeck*, xi. 201.
Madman, felony by, xiv. 217.
homicide by, xiv. 220, 237.
trespass by, xiv. 220.
Mæcenas on the marriage of Julia, xii. 168.
Magna Charta, xv. 15, 16.
Magnanimity destroyed by atheism, xii. 134, 339.
Mahomet, his sword not to be taken up, xii. 90.
going to the mountain, xii. 117.
his opportunities, xii. 276.
Malice, xiv. 244.
must be proved in capital cases, but not in civil, xiv. 219.
Malicious intent in criminal cases, xiv. 244.
Malpertius, Lord, *brings tidings to Henry VII. from Bretayne*, xi. 149.
Malum granatum, a Proserpinâ gustatum, xiii. 58.
Malum, an Deus auctor mali, xiv. 79.
Mamaluches, Sultanry of, xiv. 215.
Man lives the life of a tree, xii. 397.
his creation by Prometheus, xiii. 144.
the centre of the world, xiii. 147.
most composite of beings, *ib.*
a microcosm, xiii. 148.
of all living things most susceptible of improvement, xiii. 297, 298.
creation of, xiv. 50 — *Vide* Homo.
Man, Isle of, lawsuit respecting, on the death of Ferdinand, Earl of Derby, note by Bacon in Camden, xii. 56.
granted by Edward III. to Lord Darby, xv. 13.
Mandata licita recipiunt strictam interpretationem, sed illicita latam et extensam, xiv. 245, 246.
Maniable, xiii. 300.
Mannerhood of the kingdom, xi. 144.
Manners, Lady Ann, her case, xv. 165.
Manors, origin of, xiv. 403, 404.
Manslaughter, xiv. 374.
Mantell's case, xv. 161, 162.
Manufactures, where foreign materials are but superfluities, foreign manufactures should be prohibited, xi. 333.
one nation selleth to another one of three things, xii. 128.
effect of on the military spirit of a nation, xii. 182, 378.
Manuring, arable land cannot be manured without people and families, xi. 142.
Marbury, the preacher, xiii. 341.
Marcellus and Regulus, the false accusers, xiii. 364, 365.
Marches, jurisdiction of the court of the, Bacon's argument on, xv. 119–154.
meaning of the word, xv. 119, 126, 129, 147, 148.
Marcus Antonius, one of the only two great men of history carried away by love, xii. 110.
Margaret, Lady, eldest daughter of Henry VII. sought in marriage by James IV. xi. 299.
her marriage, xi. 323.
her jointure, *ib.*
Margaret, Lady, mother of Henry VII. her dream, xi. 365.
Margaret, Dutchess Dowager of Savoy, sought in marriage by Henry VII. xi. 349.
marriage postponed by reason of the king's illness, xi. 351.
Margaret of Burgundy, favours the Irish rebels against Henry VII. xi. 82, 83.
receives all traitors against Henry VII. xi. 136.
raises up Perkin Warbeck, xi. 200.
trains him herself for the part, xi. 203, 205.
sends him into Portugal, xi. 205.
thence to Ireland, xi. 206.
sends Stephen Frion to him, xi. 208.
Perkin returns to her in Flanders, xi. 209.
Lord Suffolk flies to her, xi. 316.
Marignian, Charles, ambassador to England, xi. 157, 158.
Marlebridge, statute of, xiv. 307; xv. 42, 58.

Marriage, essay on, xii. 101–103, 321, 322.
the right time to marry, xii. 103.
Orpheus why averse to, xiii. 112.
a certain, like a black pudding, xiii. 352, 353.
second, Cato the Elder to his son, xiii. 360, 361.
when to marry, xiii. 374.
between Normans and Saxons, encouraged by the Conqueror, xiv. 399.
by proxy, of Maximilian with Anne Dutchess of Brittaine, xi. 153, 154.
Marshalsea, institution and jurisdiction of, xiv. 377.
Marsin, Francis, sent by Henry VII. to inquire touching the person and condition of the Queen of Naples, xi. 339, 340.
Martin Swart, leader of the Almaine force against Henry VII. xi. 84.
killed at Newark, xi. 91.
Martyrdoms, why to be reckoned among miracles, xii. 277.
Martyrs, their dying words, like the song of the swan, xiii. 128.
Mary, daughter of Henry VII. treaty of marriage between her and Charles Prince of Castile, xi. 353.
never carried into effect, xi. 309.
Mason, Mr., his retort on the friend, who refused to lend him a book, xiii. 343, 344.
Masques and triumphs, essay on, xii. 209–211.
Materia, Proteus significat, xiii. 17–19.
de stimulo ejus per privationem, xiii. 24.
Mathew, Tobie, *letter from Bacon referring to his history of Henry VIII.* xi. 393.
to Cosmo de' Medici, letter dedicatory of a translation of Bacon's Essays, xii. 74.
Mattacina of human fortune, xi. 91.
Matter in perpetual flux, xii. 274.
represented by the fable of Proteus, xiii. 116–118.
primary particles of, xiii. 123, 124.
Matthæus's collection of proper words for metaphors, xiii. 302.
Maurice *v.* Hazard, case of, xv. 273.
Maximilian, King of Romans, rival of Charles VIII. xi. 98, 106.
rebellion of his subjects in Flanders, xi. 150.
imprisoned at Bruges by the rebels, *ib.*
married by proxy to Anne, Dutchess of Brittaine, xi. 153, 154.
his daughter contracted to Charles VIII. xi. 156.
receives the news of the marriage of Charles VIII. to Anne of Brittaine, xi. 173.
sends ambassadors to England and Spain to raise a league against Charles VIII. xi. 174.
unprovided for war, xi. 193.
aspires to the government of Castile, on the death of Philip, xi. 350.
Maxims of the law, xiv. 189–276.
dedication, xiv. 171–177.
preface, xiv. 179–185.
aim and plan of, xiv. 156, 157.
date of, xiv. 166, 167.
May, blossoms, better than March, xiii. 271, 272.
games in harvest time, Fuller's remark, xii. 61.
Mayenne, Duke de, Lieut. Gen. of the state and crown of France, xii. 52.
Mayhem, error on appeal of, xiv. 247, 248.
Mayor, Lord, his feast, xiii. 410, 411.
Meautys, *his letter to Bacon respecting his History of Henry VII.* xi. 61.
Mechanical arts flourish in the decline of a state, xii. 280.
represented in the fable of Dædalus, xiii. 129.
Mediator, Christ's office, xiv. 48.
Meditationes sacræ, xiv. 67–80.
translation, xiv. 81–96.
preface, xiv. 61–63.
Medusa slain by Perseus, meaning of the fable, xiii. 102–105.
interpretatio fabulæ, xii. 449–453.
Melocotones, xii. 237.
Memnon, the fable of his death alludes to the early deaths of

Memnon — *continued.*
men of high promise, xiii. 119.
interpretatio fabulæ, xiii. 19, 20.
Memory, all knowledge is but remembrance, xii. 273.
narrative, xiii. 304.
artificial, holpen by exercise, xiii. 301.
Menaces, xiv. 251, 265.
Mendoza, his saying, concerning the vice-royalty of Peru, xiii. 337.
Mercenary forces, xii. 179, 377.
Merchandizing is the vena porta of wealth, xii. 219.
Merchants, their value in a state, xii. 145.
Merchant-strangers, laws of Henry VII. relating to, xi. 134, 145.
Merchant-adventurers of England induce parliament to abolish the monopolies of merchant-adventurers of London, xi. 263.
recalled from Flanders by Henry VII. xi. 222.
continue the Flanders trade, xi. 259, 260.
Mercurius, nervos Jovis Typhoni sufuratus, xii. 435.
Mercury stole the sinews of Typhon, xiii. 85.
Mercy, hypocrites detected by their neglect of the works of, xiv. 89.
Merit and good works, the end of man's motion, xii. 113, 325.
Metis, or Counsel, xii. 147, 330.
meaning of the legend, xiii. 168.
interpretatio fabulæ, xiii. 62.
Mexico, conquest of, whether justifiable, xiii. 198.
Michell, patentee for making writs of supersedeas, xv. 255.
Microcosm, man a, xiii. 148.
Microcosmus, homo, xiii. 45.
Midas, meaning of his bearing ass's ears, xiii. 100.
cur aures asini habet, xii. 448.
Middle region of the air, xiii. 281.
Mildmay's case, xv. 53.
Militar election, xi. 45.
Military services, statute of Henry VII. annulling leases and grants to such as neglect to serve the king, xi. 332.
spirit, the source of greatness in states, xii. 183, 376–378.
Military — *continued.*
spirit of different nations, xii. 183.
Minerva wooed by Vulcan, xiii. 132.
attempt on her chastity by Prometheus, xiii. 155.
Natura per personam ejus adumbrata, xiii. 31.
a Prometheo sollicitata, xiii. 51.
Mines, the Low Countries have the best mines above ground in the world, xii. 128.
arbores subterraneæ, xv. 37.
Ministers, the tools of kings, xiii. 88.
Ministri, a regibus traditi, xii. 437.
Minos, fable explained, xiii. 129, 130.
interpretatio fabulæ, xiii. 29.
Minotaurus, meaning of the fable, xiii. 129, 130.
interpretatio fabulæ, xiii. 29, 30.
Miracles, why never wrought to convince an atheist, xii. 132.
new creations, xiv. 50.
of our Saviour, xiv. 82.
Misanthropi, xii. 120, 319.
Moderator more troublesome than the actor, xii. 162, 334.
Monarchy, without nobility a tyranny, xii. 121.
all other commonwealths subsist by a law precedent, xv. 196.
monarchy grounded on nature, xv. 197, 198.
analogies —
a father and his family, *ib.*
a shepherd and his flock, *ib.*
God and the world, *ib.*
office of the law in, xv. 200, 201.
no essential change in, xv. 236.
See King.
Money, not the sinews of war, xii. 178; xiii. 222, 243, 244.
adds greatness to a state, when, xiii. 246–250.
Monkey tore up the private notebook of Henry VII. xi. 362.
Monoculos, xiii. 287.
Monopolies, xii. 201.
Montagu, *his edition of Bacon's Apophthegms*, xiii. 318, 319.
Montaigne on the meanness of falsehood, xii. 83.
Montium præses Pan, cur, xii. 446.
Moore, Sir Thomas, sayings of his, xiii. 332.
at his execution, xiii. 334.

Moore, Sir Thomas — *continued.*
to the suitor, who presented him with two silver flagons, xiii. 334.
when pressed for a long day, xiii. 353.
to his lady in her pew, xiii. 349.
book neither rhyme nor reason, xiii. 398.
Moors driven out of Granada, xi. 190.
of Valentia, in Spain, xiii. 194, 195.
eat no hare's flesh, xiii. 374.
More, Sir Thomas, *his account of Sir James Tyrrell's confession of the murder of the Princes in the Tower*, xi. 214.
Morley, Lord, killed before Dixmue, xi. 152.
Morris-dance of heretics, xii. 87.
Morton, John, Bishop of Ely, made a privy counsellor, xi. 64.
speech respecting Brittaine, xi. 117–124.
procures a law against conspiracy, xi. 131.
hated by the court, *ib.*
dilemma for raising benevolences, xi. 184.
speech at St. Paul's, announcing the conquest of Granada, xi. 191.
life sought by the Cornish rebels, xi. 265.
death and character, xi. 310.
Mort-pays, statute of Henry VII. for punishment of, xi. 185.
Morysine, Sir Richard, *his Apomaxis calumniarum*, xi. 322.
Moses the only man who broke both tables of the law at once, xiii. 410.
Mothers, partiality of their affection, xii. 100, 322.
Mountague, Sir Harry, Bacon to, xiii. 408.
Mountains, why Pan the god of, xiii. 98.
Mountebanks for the body politic, xii. 116.
Mountford, Sir Symond, favours Perkin Warbeck, xi. 212.
tried and beheaded, xi. 223.
Mountjoy, Lord, Bacon's letters to, xiii. 261–264.
Mullen, Sir John, his case, xv. 150, 152.
Müller, Max, *Professor, his explanation of Greek Mythes*, xii. 409–415.
Munster, madmen of, xii. 315.
Murder, appeal of, xiv. 237.
given to next of kin, xiv. 373.
malicious intent necessary to constitute, xiii. 244.
Murray, John, *procures Michell his appointment by James I. to a new Patent Office; the consequent proceedings*, xv. 251–256.
Musæ, cur Bacchi comites, xiii. 39.
Muses, why found in the train of Bacchus, xiii. 140, 141.
Musician who like Orpheus, drew stones, xiii. 363.
Mustapha, his death fatal to Solyman's line, xii. 143.
his wife Roxalana, *ib.*
Mutianus, his maxim, that money is the sinews of war, xiii. 222, 243, 244.
Mythes, *Max Müller's mode of explaining*, xii. 409–415.
Bacon's theory, xii. 410; xiii. 75–81.

N.

Nakedness, uncomely both in mind and body, xii. 97.
a great defacement, xiii. 215, 216.
Nantes, besieged by Charles VIII. xi. 109.
siege of, misdated by Bacon, xi. 109, 176–178.
Naples, designs of Charles VIII. on, xi. 162, 169.
conquered and lost by Charles VIII. xi. 238.
revolts to Ferdinando the younger, xi. 238.
Henry VII. contemplates marriage with the Queen, widow of Ferdinando the younger, xi. 338, 339.
Narcissus, or self-love, interpretation of the fable, xiii. 88–90.
the flower, why sacred to the infernal deities, xiii. 90.
gathered by Proserpine, xiii. 163.
takes his name from torpor or stupor, xiii. 165.
sive Philautia, xii. 438, 439.
a Proserpina carptus, xiii. 59.
Narcissus relating to Claudius the marriage of Silius and Messalina, xii. 155.

Narses, the eunuch, xii. 105.
Nativity of the French king truly cast, xii. 204.
Natura, Pan symbolum naturæ, xii. 443–446.
nulla simplex, xii. 445.
Naturalization, case of the postnati of Scotland, xv. 193–247.
privilege and benefit of, xv. 202.
grades of,
alien enemy, xv. 202.
alien friend, xv. 203.
denizen, xv. 203, 204.
natural-born subject, xv. 204.
confutation of false opinions upon, xv. 206–224.
what suffices for, xv. 227.
either place or parents should suffice, xv. 226.
of foreigners, xiii. 238.
Nature, essay on nature in men, xii. 211–213, 355, 356.
custom only can alter and subdue, xii. 211, 355.
rules for disciplining, xii. 212, 355.
is best perceived in privateness, xii. 212, 356.
happy they whose natures suit with their vocations, *ib.*
runs either to herbs or weeds, *ib.*
deformed people generally have their revenge on, xii. 227, 353.
Pan a symbol of, xiii. 94–97.
summary law of, xiii. 123.
described under the person of Minerva, xiii. 132.
outstripped by art, xiii. 143.
fable of Proserpine relates to, xiii. 164.
is nothing but the laws of the creation, xiv. 49.
the law of, xv. 225.
Navigation laws, xi. 145.
Nebuchadnezzar, his tree of monarchy, xii. 181.
Necessitas inducit privilegium quoad jura privata, xiv. 213–217.
publica, major est quam privata, xiv. 215.
culpabilis, xiv. 216.
Necessity, why represented by the river Styx, xiii. 91.
when a good defence, xiv. 213–217.
Necessity — *continued*
of three kinds,
for conservat
213, 214.
of obedience,
of the act o
strangers,
privilegeth only c
vata, xiii. 215–2
Negative more pregn
than the indefini
side, easiest to u
347, 348.
Negligence, homicide
Negotiating, essay on
302, 303, 366, 3
whether by letter
best, xii. 245, 3
choice of instrum
247, 302, 303, 3
Nehemiah, his politic
the king, xii. 155.
Nemesis, or the vicissi
meaning of the f
136.
daughter of Ocea
xiii. 135.
why winged, *ib.*
why crowned, *ib.*
armed with a spea
mounted on a stag
interpretatio fabul
Nero, of Seneca's styl
called a youth wif
cause of his fall,
Nerva, at supper, xiii.
Neville, Sir George,
Warbeck at Paris, x
New trial granted upo
cases above the val
Statute of Henry VI
Newark, battle of, xi.
Newbery, Henry, his
283.
Newport, in Flanders
vain by the French
Cordes, xi. 152.
Nicolas, Sir Harris, *h*
and ordinances of th
cil, xi. 369, 370.
Night, the parent of C
Nimrod, the first conqu
Nisi Prius, commission
390.
Nobility, essay on, xii.
324.
new, the act of po
the act of time,

Nobility — *continued.*
of birth, abateth industry, xii. 122, 324.
numerous, impoverish a state, *ib.*
not to be multiplied, xii. 128, 179, 377.
Nobles, how to be dealt with by kings, xii. 144.
Noel, Henry, his saying, courtiers are like fasting days, xiii. 379.
Nomination to a church, xiv. 229.
Non accipi debent verba in demonstrationem falsam, quæ competunt in limitationem veram, xiv. 239, 240.
Non obstante, xiv. 252–255.
Non potest adduci exceptio ejusdem rei, cujus petitur dissolutio, xiv. 193–197.
Non videtur consensum retinuisse, si quis ex præscripto minantis aliquid immutavit, xiv. 264, 265.
Non-claim, Statute of, passed by Edward III. xi. 142.
fit for times of war, *ib.*
Norham Castle, besieged in vain by James IV. of Scotland, xi. 276.
Scottish gentlemen murdered at, xi. 298.
North, northern nations more martial than southern, xii. 278.
Northumberland, Earl of, employed by Henry VII. to quiet the malcontents of Durham and Yorkshire, xi. 135
murdered by them, *ib.*
invaded by the King of Scots, with Perkin Warbeck, xi. 250–258.
Norway, prophecy respecting the fleet of, xii. 205.
Norwich, Henry VII. at, xi. 86.
Notebook of Henry VII. torn up by his monkey, xi. 362.
Nox excludit ovum undè Cupido oritur, xiii. 22.
Nul tiel record, no error on, xiv. 247.
Nullum tempus, prerogative of, not grantable, xv. 14.
Nunc dimittis, the sweetest canticle, xii. 86.
Nuptiæ, Orpheus nuptiis cur inimicus, xiii. 14.
Nymphæ Pana oblectant, animæ scilicet, xii. 447.
Nymphs, the souls, why attendants of Pan, xiii. 98.

O.

Oath of the gods by the river Styx, xiii. 90.
Ocean, an apt emblem of vicissitude, xiii. 135.
Odiam, case of the manor of, xv. 86.
Odours introduced at masques, xii. 210.
of ointments, more durable than those of flowers, xii. 259, 369.
Oes or spangs, xii. 210.
Office, how to bear oneself in, xii. 111–115, 324–327.
Offices, false, against his rich subjects by Henry VII. xi. 326.
Old age, second childhood not to be desired, xii. 401.
Olive branch, rather than a laurel branch, in his hand, xi. 161.
Opera Dei, xiv. 67.
Opinion, that which relates to truth is higher than that which relates to opinion, xiii. 272, 273.
Opportunities, a wise man will make more than he finds, xii. 258, 362.
Opposita juxta se posita magis elucescunt, xv. 121, 139.
Opposition, many a man's strength is in, xii. 255.
Opus et usus, xiv. 305.
Orange, Prince of, taken prisoner at the battle of St. Alban's, by Charles VIII. xi. 127.
Orange-tawny, gentleman at the tilt in, xiii. 367.
Orators, likened by Solon to winds upon the sea, xiii. 377.
Order, the life of dispatch, xii. 163, 335.
Ordinances *in Chancery*, xiv. 160.
made by Bacon when Chancellor, xv. 351–372.
Ordnance, invention of in India, xii. 279.
in China, *ib.*
excellences of, *ib.*
Orleans, Duke of, takes refuge with the Duke of Brittaine, xi. 100.
directs him in all things, xi. 107.
taken prisoner by Charles VIII. at the battle of St. Alban's, xi. 127.

Ormond, Thomas, Earl of, ambassador to Charles VIII. xi. 170.
Ornamenta *Rutimalia*, xiv. 9, 10.
Orpheus, or Philosophy, interpretation of the fable, xiii. 110–113.
his singing of two kinds, xiii. 111.
why averse to marriage, xiii. 112.
at the islands of the Sirens, xiii. 170, 172.
his death, xiii. 139, 142.
musician who like him drew stones, xiii. 363.
interpretatio fabulæ, xiii. 11–14.
duplex ejus cantio, xiii. 13.
nuptiis cur inimicus, xiii. 14.
apud insulas Sirenum, xiii. 64, 66.
a mulieribus discerptus, xiii. 37, 40.
Orthography *of Bacon's time*, xii. 70, 288.
Osbeck, the true name of Perkin Warbeck, xi. 203.
Ostentation, the use of, xii. 262, 375.
Other, in Statute of Uses, xiv. 326.
Ottoman Empire, designs of Charles VIII. against, xi. 163, 164, 169.
family, its origin, xiii. 244.
Outlawries, one means of extortion used by Empson and Dudley, xi. 326, 327.
proceedings to, xiv. 405.
Overbury, *disclosures promised by Franklin the apothecary, respecting his murder*, xii. 11.
Ovum Noctis, xiii. 22.
Oxford, John, Earl of, one of Henry VIIth's generals, xi. 86, 194.
his brother killed at the siege of Sluice, xi. 188.
entertains Henry VII. at Henningham, fined 15,000 marks, xi. 327, 328.
Oxidrakes, in India, ordnance used by them against the Macedonians, xii. 279.
Oyer and terminer, commission of, xiv. 386.

P.

Pace, Queen Elizabeth's fool, xiii. 330.
Packington, Sir John, *Sheriff of Worcestershire*, xv. 109.
Padre commune, xii. 255, 368.
Page, who had been whipt, to his master, xiii. 359.
Paget, Lady, to Queen Elizabeth, xiii. 382.
Painter, who became a physician, xiii. 380, 381.
may make a better face than ever was, xii. 226, 353.
Palace, description of a perfect one, xii. 230–235.
Pallas, birth of, xii. 410.
meaning of the legend, xii. 147, 331; xiii. 167, 168.
ex Jove nata, xii. 434.
interpretatio fabulæ, xiii. 62.
Pan, or Nature, interpretation of the fable, xiii. 92–101.
his origin, xiii. 92, 94.
represents Nature, xiii. 94–96.
the Fates his sisters, xiii. 95.
why horned, *ib.*
why hairy, *ib.*
why biform, xiii. 96.
his emblems explained, xiii. 97.
his offices, xiii. 97, 98.
the god of countrymen, xiii. 98.
president of mountains, *ib.*
his attendants, xiii. 98, 99.
Panic terrors, xiii. 99.
challenge to Cupid, *ib.*
capture of Typhon, xiii. 99, 100.
discovery of Ceres, xiii. 100.
matched in music with Apollo, *ib.*
marriage with Echo, xiii. 101.
sive Natura, interpretatio fabulæ, xii. 441–449.
origo ejus, xii. 441. 442.
universitatem rerum, sive Naturam repræsentat, xii. 443–446.
sorores ejus, Fata, xii. 444.
cornua ejus, *ib.*
cur hirsutus, *ib.*
cur biformis, xii. 445.
pedes capreæ habet, *ib.*
insignia ejus, *ib.*
officium, xii. 446.
deus venatorum et ruricolarum, *ib.*
montium præses, *ib.*
comites ejus, Satyri et Sileni, xii. 447.
terrores Panici quid, *ib.*
cum Cupidine pugnat, *ib.*

Pan — *continued.*
Typhonem in retibus implicat, xii. 448.
inventio Cereris, *ib.*
cum Apolline contendit, *ib.*
uxor ejus Echo, xii. 449.
Pandora, xiii. 43, 49, 145, 153.
Panic terrors, what, xiii. 99.
Panici terrores, xii. 447.
Pannage of timber, belongs to the lessee, xv. 43.
Panther's skin, why worn by Pan, xiii. 97.
Parables, *the interpretation of*, xii. 410; xiii. 69.
their use in teaching, xiii. 80.
Parabolæ, interpretatio earum, xii. 427–432.
usus duplex, xii. 430.
argumentis antiquiores. xii. 431.
Paradoxes, Christian, xiv. 143–151.
probably not by Bacon, xiv. 139–142.
Pardi maculæ, quid referunt, xii. 446.
Pardon, general, proclaimed by the council of Henry VII. at Shine, xi. 78.
general, granted by Henry VII. in the last year of his reign, xi. 354.
Parental authority, by the law of England, xv. 184.
by the law of Nature, xv. 197.
Parents and children, essay on, xii. 99–101.
unequal distribution of parental affection, xii. 100.
treatment of children, *ib.*
Parker, Sir James, killed at the tournament at Shine, by Hugh Vaughan, xi. 192.
Parliament, first of Henry VII. xi. 57.
second of Henry VII. xi. 94.
again assembled, xi. 114.
subsidies granted to Henry VII. xi. 125.
in the 4th year of Henry VII. xi. 140.
eager for war with France, xi. 182.
in the 7th of Henry VII. xi. 176–186.
date of this meeting, xi. 176–178.
preceded by a Great Council, xi. 178.
speech of the king, xi. 178–181.
Parliament — *continued.*
a parliament of war, xi. 184.
in the 11th of Henry VII. xi. 239.
in the 12th of Henry VII. xi. 260.
summoned in the 19th of Henry VII. xi. 332.
distinguished from the Great Council, xi. 367–374.
have power to extinguish their own authority, xiv. 253, 254.
cannot bind a future Parliament by any act, xi. 241; xiv. 253.
Parmenio, Alexander to, xiii. 354.
Parricide, xiv. 233; xv. 325.
Parsimony, xii. 200.
Parties in a state, xii. 254–256, 301, 302, 367, 368.
Parts, plurality of, makes a show of magnitude, xiii. 275.
Pasquil, saying of the Duke of Sesa respecting, xiii. 337.
Passion or Desire, described in the person of Bacchus, xiii. 139.
Paston *correspondence*, xi. 370, 373.
Pasturages, great, xii. 128.
Patent Offices, *created by Elizabeth, and by James I.* xv. 251.
list of, xv. 274–276. — *See* Letters Patent.
Paternoster, wager about repeating, xiii. 397, 398.
Patres patriæ, xii. 265, 300.
Patriarchal government, xv. 199.
Patrick, an Austin friar, sets up a counterfeit Earl of Warwick, xi. 303.
Paulet, Sir Amice, his saying, "Stay awhile, that we may end the sooner," xiii. 346.
Paul's Cross, Pope's bull published at, xi. 331.
Paul's, Church of, great ceremony on receipt of the news of the conquest of Granada, xi. 191.
black eagle blown from the spire, an omen, xi. 347.
Payne, *his engraving of Henry VII.* xi. 17.
Peace, surety to keep, xiv. 373, 382.
commission of the, xiv. 391.
conservators of, their office, xiv. 380, 381. — *See* Justices.
Pedigree, dispute as to, xiii. 364.
Pedum Panis cur recurvum, xii. 445.
Peers of the kingdom, mode of trial of, xv. 324, 331.

Pegasus, interpretation of the fable, xiii. 105.
famam denotat, xii. 453.
Peile, saying of a Lacedæmonian prisoner at, xi. 332, 333.
Pembroke Castle, Henry VII. born at, xi. 365.
Pembroke, Jasper, Earl of, created Duke of Bedford, xi. 56.
Penal Laws, administration of by Judges, xii. 267, 371.
shall not be taken by equity, xiv. 237.
Penances of Russian monks, xii. 214.
greatness of suffering endured, xiii. 298.
Penelope, whether the mother of Pan, xiii. 92.
utrum Pan filius ejus, xii. 441.
Pensions from Charles VIII. of France to the ministers of Henry VII. xi. 197.
Pentheus, or Curiosity, the fable interpreted, xiii. 108, 109.
his death, xiii. 139, 142.
interpretatio fabulæ, xiii. 10, 11.
a mulieribus discerptus, xiii. 37, 40.
Perfection, that which is best in perfection is best altogether, xiii. 271.
Perils commonly ask to be paid in pleasures, xii. 111.
Perin, provost of, killed by the Cornish rebels, xi. 266.
Peripatetici, de stimulo materiæ per privationem, xiii. 24.
philosophia eorum nimis venerata, xiii. 47.
Peripatetics refer the original impulse of matter to privation, xiii. 123.
held in too great honour, xiii. 150.
Perkin Warbeck, xi. 38.
defensive preparations against him perhaps, and not against French invasion, xi. 167.
raised up by Lady Margaret of Burgundy, to personate Richard Duke of York, xi. 200, 246.
his qualifications for the part, xi. 201.
Edward IV. whether his godfather, xi. 202.
parentage, *ib.*
Perkin Warbeck — c
lives with John
Antwerp, xi. 2
trained for the
Lady Margare
sent to Portugal,
arrives at Cork
206.
received by Cha
court, as Duk
208.
flies again to Fl
Margaret, xi.
excitement in I
news, xi. 211.
measures taken
expose the imp
219.
Archduke Philip
declines to del
Henry VII. xi
trials and execut
herents, xi. 22
lands in Kent, xi
his troops cut to
prisoners hung
from Flanders s
xi. 243.
in Scotland wel
King of Scots,
his speech to the
xi. 245–249.
with the King of
Northumberlar
258.
his proclamation
374–379.
James IV. refuse
up to Henry, x
but dismisses hin
sails for Ireland,
invited by the C
283.
goes to Bodmin,
besieges Exeter,
takes sanctuary
288.
dragged into L
umphal proces
escapes to the
Shyne, xi. 301
again imprisone
ib.
executed at Tybu
Perpetuities, xiv. 413
Persecutions, religiou
Perseus, or War, in
the fable, xiii.

Perseus — *continued.*
interpretatio fabulæ, xii. 449–453.
Persia, her weakness, by reason of her extent of empire, xiii. 234–236, 239.
its geographical position, xiii. 254.
Person, in Statute of Uses, xiv. 324, 326.
Persona conjuncta æquiparatur interesse proprio, xiii. 250.
Personal qualities, descriptions of, xiv. 20.
Persuasion, the art of, xiii. 269.
Peru, conquest of, whether justifiable, xiii. 197, 198.
Peryman's case, xv. 86.
Petitions to the king's council, set days should be appointed for, xii. 151.
in Chancery, xv. 367.
Petronius, his levity at the approach of death, xiii. 170.
moriturus, xiii. 64.
Petrucci, Cardinal, his conspiracy against Leo X. xi. 139.
Phaeton, his car went but a day, xii. 274.
Phantasm appearing to M. Brutus, xii. 204.
Philautia, Narcissus, sive, xii. 438, 439. — *Vide* Narcissus.
Philip of Macedon, of one who spoke evil of him, xiii. 351.
the prisoner's appeal, xiii. 361.
answer of the musician to, *ib.*
his dream respecting his wife, xii. 203.
Philip, Archduke, Henry VII. sends an embassy to, into Flanders, demanding the dismissal of Perkin Warbeck, xi. 218.
declines to deliver him up, xi. 221.
interview with Henry VII. at Calais, xi. 308.
proposed cross-marriages between their children, xi. 309.
becomes King of Castile, in right of Joan his wife, xi. 331, 338, 339.
on ill terms with Ferdinando, xi. 340.
sails from Flanders with a great fleet for Spain, xi. 342.
driven by a storm into Weymouth, xi. 343.
Philip, Archduke — *continued.*
interview with Henry VII. at Windsor, xi. 344.
concludes a treaty, the Intercursus malus, with him, xi. 346.
dies soon after his arrival in Spain, xi. 347.
Philo Judæus, compared the sense to the sun, xiii. 354.
Philosophia, Orpheus, sive, xiii. 64.
naturalis, opus ejus nobilissimum est instauratio rerum corruptibilium, xiii. 13.
Philosophy, a little, inclineth man's mind to Atheism, xii. 132, 337.
can induce contempt of pleasure, xiii. 170.
natural, its noblest work the restitution of things corruptible, xiii. 111.
Philosopher's stone, xii. 170.
Phocion, when the people applauded his speech, xiii. 335.
to Alexander's messenger, xiii. 371.
Physic, rules for the use of, xii. 188, 189, 342, 343.
Physicians have the power of the Church to bind and loose, xiii. 396.
how to select one, xii. 189, 343.
Pilate, jesting, said, What is Truth? xii. 81.
Pillars of government, four, xii. 125, 380.
Pillow, on which a debtor could sleep, xiii. 362.
Pine-apple trees, xii. 236.
Pipe of Pan, an allegory, xiii. 97.
Pirates, *of Algiers*, xiii. 176, 177.
lawfulness of wars on, xiii. 212, 213.
Pisistratus, correction in Camden's report of Bacon's speech, comparing Essex with him, xii. 63.
Piso, his solemnity of countenance, xii. 164, 347.
Pius Quintus, worthy to be canonized, xiii. 194.
Place, great, essay on, xii. 111–115, 324–327.
Placita juris, opposed to regulæ juris, xiv. 235.
Plague in the 15th of Henry VII. in London and elsewhere, xi. 307.
Planets, princes should resemble in their motions, xii. 125.

Plantagenet, Edward, son to the Duke of Clarence, created Earl of Warwick by Edward IV. xi. 72.
confined by Richard III. *ib.*
reported to have escaped from the Tower, xi. 75.
counterfeited by Lambert Symnell, *ib.*
paraded through the streets of London, xi. 80.
arraigned of treason and beheaded, xi. 305.—*See* Warwick.
Plantations, essay on, xii. 194–198.
Plato, his character of Prodicus, xii. 165, 347.
his great year, xii. 275.
all knowledge is but remembrance, xii. 273.
to one that pitied Diogenes shivering, xiii. 347, 348.
to Diogenes, xiii. 351, 352.
to a young man at a dissolute house, xiii. 368.
enamoured of Stella, xiii. 397.
Plautianus, favourite of Septimius Severus, xii. 169.
Play, the sin against the Holy Ghost, xiv. 36.
Pleading shall ever be taken strongest against him that pleads, xiv. 205–211.
for ambiguity of words, xiv. 205.
ambiguity that grows by reference, *ib.*
incertainty of intendment, xiv. 206.
impropriety of words, *ib.*
repugnancy, xiv. 207.
a man shall not disclose that which is against himself, xiv. 208.
the ancient and exact form of, xv. 195.
Pleasure, the fable of Tithonus, xiii. 120.
or Pandora, xiii. 153.
fable of the Sirens, xiii. 169–172.
springs from the union of abundance with hilarity of mind, xiii. 170.
Pliny on the arts of self-commendation, xii. 263, 375.
Pliny, Caius, made a collection of the misfortunes of Augustus Cæsar, xiii. 134.
Plough, yieldeth the best soldiers, xii. 377.
Plutarch on base conceptions of the Deity, xii. 135.
of Timoleon, xiii. 287.
of the commonwealth of bees, xiii. 399.
of men of weak abilities in great place, *ib.*
good fame like fire, *ib.*
Pluto, helmet of, is secresy in counsel, and celerity in execution, xii. 163.
better to Ferdinando than Pallas, xi. 341.
his rape of Proserpine, xiii. 58, 163.
represents the earth, xiii. 164.
Plutus timidus, xiii. 248.
Poco di matto, xii. 216, 359.
Poesy, vinum Dæmonum, xii. 82.
Poets, those much conversant with, become conceited, xi. 34.
the best writers, next to those who write prose, xiii. 343.
Poison, intended for A. taken by B. xiv. 244.
Poland, cause of its martial greatness, xii. 180.
Politique, Eupolis a, xiii. 191.
malignant men make great politiques, xii. 120, 319.
Polycrates, his daughter's dream, xii. 203.
Polydore Vergil, *character of his History*, xi. 15, 25.
his mistake of a Great Council for a meeting of Parliament, xi. 114, 176.
Pomegranate eaten by Proserpine, xiii. 163, 166.
Pompey, Julius Cæsar's mode of dealing with him, xii. 38.
his treatment of Sylla, xii. 167, 168.
his war on the Cilician pirates, xiii. 212.
likened by Lucullus to a carrion crow, xiii. 379, 380.
his saying to Lucullus, xiii. 351.
when advised not to embark during a storm, xiii. 352.
Pons, Gaspar, emissary from Pope Alexander to Henry VII. xi. 312.
Pope likes no Tramontanes in Italy, xi. 180.

Popham, Speaker, his jest to the queen respecting what passed in the Commons, xiii. 341, 342.
Popish recusants, xv. 334.
Population, effect of inclosures on, xi. 142–145.
ordinance respecting houses of husbandry, xi. 143.
should not exceed the stock of the kingdom, xii. 127.
Porcelain, xv. 37.
Portugal, Perkin Warbeck sent to, xi. 205.
Postilled in the margent in the king's hand, xi. 328.
Postnati, Bacon's argument in the case of, xv. 193–247.
corrected by himself, xiv. 156.
Postscript, most important matter in, xii. 155.
Potestas ipsa scientia est, xiv. 79.
suprema seipsum dissolvere potest, ligare non potest, xiv. 253.
principis non est inclusa legibus, questioned, xv. 13.
Poverty, the origin of seditions, xii. 126, 380.
its removal their cure, xii. 127.
the foundation of all great monarchies, xiii. 222, 244, 245.
Power, a good thing, xiii. 274.
knowledge itself is, xiv. 95.
Poynings, Sir Edward, sent with forces into Flanders by Henry VII. to aid Maximilian, xi. 188.
sent as ambassador by Henry VII. to the Archduke Philip in Flanders, xi. 218.
sent by Henry VII. to subdue the Wild Irish, xi. 233.
sends the Earl of Kildare prisoner to England, *ib.*
introduces the law of England into Ireland, *ib.*
Ireland quieted by his commission, xi. 243.
Præmunire, cases of, xv. 331–333.
punishment, trial, and proceedings in cases of, xv. 333.
Præsentia corporis tollit errorem nominis; et veritas nominis tollit errorem demonstrationis, xiv. 267–373.
Prætor fidei commissarius, xiv. 302.
Pragmatical Sanction, xii. 182.
Praise, essay on, xii. 258–260, 368, 369.
Praise — *continued.*
the reflection of virtue, xii. 258, 368.
arising from flattery, xii. 259.
from good wishes, *ib.*
from malice, *ib.*
Prayer, a great office in the church, xiv. 89.
Prayers composed by Bacon, xiv. 101–106.
Pre-digestion, xii. 161, 333.
Precedents, Sir Fulke Greville on, xiii. 370.
Prelates, when dangerous to kings, xii. 144.
Premier seizins, xi. 326.
Prentise, Mr. Anthony Bacon's man, xiii. 413.
Preoccupation of mind ever requireth Preface of speech, xii. 163, 334, 335.
Prerogative, royal, in the reign of Henry VII. xi. 356.
nature and exercise of, xii. 390–394; xv. 14.
notes on by Bacon, xiv. 161.
may dispense with politic statutes, xiv. 253.
power of denizenation, xv. 206.
in parliament, xv. 374, 375.
in war and peace, xv. 375.
in matters of money, xv. 375, 376.
in matters of trade and traffic, xv. 376.
in the persons of his subjects, xv. 376, 377.
Pretorian bands, the dangers arising from, xii. 146.
Prices to be regulated by government, xii. 127.
of cloths, limited by statute of Henry VII. xi. 147.
Priests, scandal of, a cause of Atheism, xii. 134, 340.
Prime, or cycle of weather, xii. 276.
Primer seizin, xiv. 400.
Primitive ages, their wisdom either great or lucky, xiii. 80.
Primum mobile, xii. 125.
a new, bought in by superstition, xii. 136, 340.
Princes, their motions should resemble those of the planets, xii. 125.
girt with reverence by God, xii. 125, 380.

Princes — *continued.*
their witty speeches have caused seditions, xii. 130.
need men of military valour, xii. 131.
oaths of, little to be depended on, xiii. 91. — *See* Kings.
Principal and Agent, xiv. 245.
Principia repugnantia boni et mali, xiv. 79.
Principles, opposite, of good and evil, xiv. 95.
Principum *concilium, what*, xi. 114.
Privation, that which it is good to be rid of is evil, and vice versâ, xiii. 279.
Privilege, writs of, xv. 368.
Privilegium non valet contra rempublicam, xiv. 215.
Probus, his saying "Si vixero, non opus erit amplius militibus," xii. 131.
Proclamation, *draft of one relating to the Welsh Councils*, xv. 105.
Procus Junonis, sive Dedecus, interpretatio fabulæ, xiii. 21.
Prodicus, his character in Plato's Protagoras, xii. 165, 347.
Profession, every man a debtor to his, xiv. 179.
Profit, meaning of the fable of Atalanta, xiii. 142.
a prendre, xiv. 211.
Prometheus, meaning of the myth, xiii. 144–156.
signifies Providence, xiii. 146.
and Epimetheus, xii. 129, 381.
his sacrifice, xiii. 145, 152.
attempts the chastity of Minerva, xiii. 155.
interpretatio fabulæ, xiii. 42–52.
Providentiam significat, xiii. 44.
Promise, a woman's, xiii. 400.
Promus, of formularies and elegancies, xiii. 259; xiv. 19–37.
preface, xiv. 9–18.
Property, in lands gained by entry, xiv. 392–394.
descent, xiv. 395–398.
escheat, xiv. 398–409.
conveyance, xiv. 409–425.
in goods and chattels, gained by gift, xiv. 425.
sale, *ib.*
stealing, xiv. 426.
waiving, xiv. 427.
straying, *ib.*
shipwreck, xiv. 428.
Property — *continued.*
forfeiture, xiv. 428.
executorship, xiv. 428, 429.
administration, xiv. 429–431.
legacy, xiv. 431.
arguments of, are three, damages, seizure, and grant, xv. 44.
Prophecy, respecting the successor of Pope Leo, whose name should be Adrian, xi. 140.
essay on, xii. 203–206.
of the Pythonissa to Saul, xii. 203.
Homer's of the Roman empire, *ib.*
Seneca's of the discovery of America, *ib.*
of Tiberius to Galba, xii 204.
of Christ in the time of Vespasian, *ib.*
Henry VI. of Henry VII. *ib.*
when hemp is spun, England's done, *ib.*
of the Spanish fleet, xii. 205.
of Regiomontanus, *ib.*
three causes which have given them credit with men, xii. 206.
Proselytism by the sword, xii. 90, 316.
Proserpina, nurse of Bacchus, xiii. 37, 138.
or Spirit, meaning of the legend, xiii. 163–167.
interpretatio fabulæ, xiii. 58–61.
Prosperity, the blessing of the Old Testament, xii. 94.
its virtue Temperance, *ib.*
best discovers vice, xii. 95.
Protestantism in France, leagued against by Henry III. xii. 124.
Proteus, or Matter, interpretation of the fable, xiii. 116–118.
interpretatio fabulæ, xiii. 17–19.
Prothonotary of Common Pleas, assize of his office brought by, xiv. 247. Compare xv. 305–308.
Proverbs collected by Bacon, xiv. 14, 23–27.
Providence signified by Prometheus, xiii. 146.
Providentiam Prometheus significat, xiii. 44.
Provinces, the defence of, xiii. 234.
must not be out of proportion to

Provinces — *continued.*
the seat of government, xiii. 237–240.
of Great Britain, xiii. 241, 242.
Provost of Perin, killed at Taunton, xi. 266.
Proxy-marriage of Maximilian with Anne Dutchess of Brittaine, xi. 153, 154.
Psalms translated by Lord Bacon, xiv. 123–135.
Psalm I. xiv. 123, 124.
XII. xiv. 124, 125.
XC. xiv. 125–127.
CIV. xiv. 128–131.
CXXVI. xiv. 132.
CXXXVII. xiv. 111, 133, 134.
CXLIX. xiv. 134, 135.
Publius Syrus, *Mimi of*, xiv. 9.
Puebla, Doctor De, Spanish ambassador to Henry VII. xi. 339.
Punctuality, xiii. 398.
Pussle of business, xii. 325.
Puteanus, Petrus, *depositary of Camden's Annals of Queen Elizabeth*, xii. 47.
Putrefaction, retardation of, xiii. 167.
Pyonner in the myne of truth, xiv. 30.
Pyrrha and Deucalion, meaning of the fable, xi. 133.
Pyrrhus, Such another victory, and we are undone, xiii. 368.
Cineas to, xiii. 368, 369.
Pythagoras his parable, Eat not the heart, xii. 169.
describing his own condition to Hiero, xiii. 380.
Pythonissa, her prophecy to Saul, xii. 203.

Q.

Quadlins, xii. 237.
Quarrels, the causes of, xii. 139.
Quarter Sessions, xiv. 382.
Queen, cannot be seized to a use, xiv. 340.
Dowager, cloistered at Bermondsey by Henry VII. xi. 73, 77.
her dower whether restored, xi. 77.
her varied fortunes, xi. 79.
foundress of Queen's College, Cambridge, xi. 80.
Queen's College, Cambridge, founded, xi. 80.
Quia emptores terrarum, statute of, xiv. 303.
Qui bene nugatur, ad mensam sæpè vocatur, xiv. 24.
Qui sentit commodum, sentire debet et onus, xiv. 396.
Quinctius, Titus, that Antiochus and the Œtolians were bound together by reciprocal lying, xiii. 396.
Quod remedio destituitur, ipsâ re valet, si culpa absit, xiv. 223–231.
Quod sub certâ formâ concessum, vel reservatum est, non trahitur ad valorem vel compensationem, xiv. 211–213.

R.

Rabelais, on his deathbed, xiii. 338.
on the art of reconciliation, xiii. 394.
Railing will be found by the country, if you find posts, Goldingham to Leicester, xiii. 321.
Rainsford, Sir John, his jest to Queen Elizabeth, xiii. 329.
Raleigh, Sir Walter, of the Ladies of the Bedchamber, xiii. 335.
to a cowardly fellow who was a good archer, xiii. 384.
of a nobleman who grew fat soon after his marriage, xiii. 385.
Madam, is the piggy served ? xiii. 386, 387.
Ransome of prisoners, law of perpetuities an hindrance to, xv. 183.
Rape of Proserpine, xiii. 163.
Rat, Gondomar's story to Bacon, xiii. 394.
Ratcliffe, Robert, tried and beheaded for Perkin Warbeck's rebellion, xi. 223.
Rationalists, like spiders, xiii. 404.
Ravenstein, Lord, heads the insurrection in Flanders against Maximilian, xi. 150, 186.
surrenders the town and castles of Sluice to the Duke of Saxony and the English, xi. 189.
Raw material, xii. 128.
Rawley, Dr., *his Common-place Book*, xiii. 321.
his edition of the Latin translation of the Essays, xii. 72.

Rawlinson, Dr., *his copy of Camden's Elizabetha*, xii. 47.
Reading, modes of, xii. 252, 253, 291, 360.
maketh a full man, conference a ready man, and writing an exact man, xii. 253, 292, 360.
on the Statute of Uses, xiv. 159, 160, 283–353.
preface to, xiv. 279–282.
notes to, xiv. 354–359.
Real property. — *See* Property.
Reasons, always give, when you change your mind, xii. 114, 326.
Rebellion of Lambert Symnell, xi. 71–92.
Rebellions of the belly, xii. 126.
Rebellis, Typhon, sive, xii. 435.
Recamera, xii. 234.
Receditur a placitis juris, potius quàm injuriæ et delicta maneant impunitæ, xiv. 235–238.
Recognisances, xv. 369.
Reconciliation, the art of, according to Rabelais, xiii. 394.
Recoveries, xiv. 417, 418.
References in Chancery, xv. 360–362.
Referendaries, xii. 250.
Reform, without bravery or scandal of former times, xii. 113, 326.
Reformation of the English Church, xiii. 403.
Regeneration, xiv. 54.
Regiomontanus, his prophecy, xii. 205.
Register *of letters*, *Bacon's*, xiii. 294.
Registers in Chancery, orders and office of, xv. 358–360.
Religion *of Bacon*, xiv. 41.
his creed, xiv. 47–57.
a mean between superstition and atheism, xiv. 94.
essay on unity in, xii. 86–92, 315, 316.
origin of discords in, xii. 276.
Relligio tantum potuit suadere malorum, xii. 91.
Remitter, xiv. 223–226.
Remuant, xii. 217, 359.
Remusat, M. Charles de, *on Bacon's confession of faith*, xiv. 42.
Rent, cases upon, xiv. 199–204, 207, 225, 227, 228.
case of, in Statute of Uses, xiv. 333–338.
Rent-charge granted upon condition, xiv. 228.
Repartees, xiv. 22.
Repugnancy, plea void
Reputation, daughter o
217, 359.
essay on reputatio
xii. 263–265, 299
discreet servants
264, 300.
Reservation, xii. 95, 9
words of, xiv. 211-
Respect of persons, xii.
Rest, the accomplishm
what, xii. 113, 325.
Restoration, meaning
Deucalion, xiii. 133.
Resuscitatio, *publicatio*
Rawley, xiii. 314
apophthegms from
398.
Retainer unlawful, b
farmers, xi. 133.
Retainers and riots, sta
VII. against, xi. 335
Retribution, or Nemesi
Revelation, xiv. 52.
Revenge, essay on, xii.
a kind of wild jus
for wrongs which
law to remedy,
public for the mo
nate, xii. 93.
meaning of the fab
xiii. 134.
Revenues of England,
Reverence, that wher
are girt by God, xii.
Reversion, grant of, xi
how revocable
differs from a re
415.
Revocation, things in
revocable canno
made irrevocab
255.
where the comple
depends upon
be done by a th
first parties ca
xiv. 256–258.
of uses, Bacon's
Stanhope's case,
Rheums, the four cause
Rhodes, knights of,
VII. protector of th
315.
Ribes, xii. 237.
Richard III. slain at
45.

Richard III. — *continued.*
his murder of the princes in the Tower, xi. 214–216.
Richard, Duke of York, son of Edward IV. murdered in the Tower, xi. 200.
personated by Perkin Warbeck, *ib.*
Riches should not be in few hands in a state, xii. 128.
are for spending, and spending for honour and good actions, xii. 174, 297, 344.
essay on, xii. 198–202, 348, 349.
the baggage of virtue, xii. 198, 348.
there is small enjoyment of great wealth, *ib.*
have wings, *ib.*
in a state, too much ascribed to, xiii. 242–251.
without military virtue, a prey, xiii. 246.
competency better than surfeit, xiii. 248.
profitable according to the hands in which distributed, xiii. 249–251.
of the realm of England, xiii. 251.
like muck, require spreading, xiii. 380.
Richill, Mr., whom Littleton calls his master, xv. 168.
Richmond, or Shine, tournament at the king's palace, xi. 192.
Henry VII. dies there, xi. 37, 354.
palace of Henry VII. at, burned down, xi. 293. — *See* Shine.
Riddles of the Sphinx, xiii. 159–162.
Rights are two, jus in re, and jus ad rem, xiv. 287.
division of, according to the civilians, xiv. 291.
Riots and retainers, statute of Henry VII. against, xi. 335.
Risley, Sir John, sent ambassador to Maximilian by Henry VII. xi. 192.
Ritchemount, Henry VII.'s death at, xi. 37, 354.
Rivers of America, xii. 274.
Roberts, Jack, when asked by his tailor for a bill of his hand, xiii. 335.
saying concerning a marriage, xiii. 352, 353.
Roman Empire, prophesied by Homer, xii. 203.
its decay, xii. 278.
extent of territory a cause of weakness, xiii. 236, 239.
united by the bond of naturalization, xiii. 238.
Romans, whence their magnanimity, xii. 134, 339.
their method of extending the bounds of their empire, xii. 182.
policy of their wars, xii. 184.
Cæsar to his mutinous soldiers, xiii. 356.
Rome, reasons for visiting, xiii. 385, 386.
acceptance of a spiritual benefice from, is a case of præmunire, xv. 331.
to procure a bull touching the king's prerogative, the same, xv. 332.
Roses, the White and Red; their rival claims to the throne, at Henry VII.'s accession, xi. 48–50.
Roughness, a vice of men in authority, xii. 114, 326.
Roxalana, murderess of Mustapha, xii. 143.
Ruricolarum Deus Pan, cur, xii. 446.
Russian monks, their penances, xii. 214.
Russignon and Perpignian oppignorated to the king of France, xi. 181.
restored by Charles VIII. to Ferdinando and Isabella, xi. 195.

S.

Sabbath, its nature, xii. 113, 326.
at the end of the world, xiv. 50.
Sabinian revived heathen learning, xii. 275.
Sackford to Queen Elizabeth's remark on his boots, xiii. 348.
Sacramenta irrevocabilia, xii. 439–441.
Naturæ, affinitatis vincla, xii. 440.
Sacraments, of Nature, relationships, xiii. 91.
reverenced more by the Spaniards than the French, xiii. 365.

Sacrifice of Prometheus, xiii. 145, 152.
Sacrificium Promethei, xiii. 43, 49.
Sagitta Cupidinis, quid, xiii. 25.
Saint Alban's, victory of Charles VIII. at, xi. 127.
Saint Aubin, *victory of*, xi. 117.
Saint Ermin, xiii. 358.
Saint Paul, repairs of the steeple, xiii. 408.
Saints of God, xiv. 49.
Sale of chattels, xiv. 425.
Salique law, disputed between a Frenchman and an Englishman, xiii. 366.
the friar's argument, xiii. 367.
Salisbury, Earl of, De Sapientiâ Veterum dedicated to him, xii. 421, 422; xiii. 69, 70.
Salomon on cunning, xii. 158.
on riches, xii. 198, 348.
on novelty, xii. 273.
concerning pleasures, xiii. 172.
de voluptate, xiii. 66.
Salt, colonists should be provided with store of, xii. 197.
Salus populi suprema lex, xii. 269, 373.
Sanctuary, doubts of Henry VII. as to violation of, xi. 290.
privileges of, curtailed by him, xi. 95, 96.
not abolished by him until late in his reign, xi. 38.
Sandwich, Perkin Warbeck lands at, xi. 236.
Sandys, Lord, case of, xiv. 289.
Sapientia, opera ejus Fortitudinis opera dignitate superant, xiii. 12.
Sarisburiensis Comes, "De Sapientiâ Veterum" ei dedicatus, xii. 421, 422.
Sarza, to open the liver, xii. 166.
Saturday, Henry VII.'s lucky day, xi. 272.
Saturn, his castration, xiii. 113.
downfall of his kingdom, xiii. 115.
Saturnus, castratio ejus, xiii. 15.
a regno detrusus, xiii. 16.
Satyri, quid referunt, xii. 447.
Satyrs, emblems of old age, xiii. 99.
Saul, prophecy of the Pythonissa to, xii. 203.
Savage, Sir John, killed before the walls of Bulloigne, xi. 195.
Savages, how colonists should deal with, xii. 198.
Savill, Mr., though
writers next
write prose,
letter to, touchi
intellectual
304.
to Coranus, xiii
Sbirrerie, xii. 260.
Scandalum magnat
Scene-shifting in n
210.
Schisms, origin of,
Scholars should be
number to preferr
Scholastica, case of,
Schoolmen, like t
xiii. 385.
Science typified by
159–162.
Scientia, Sphinx, si
54.
Potestas est, xi
Scintilla *juris*, xiv
158, 167.
Scipio Africanus,
says, Ultima prim
225.
Scotch laws praised.
Scotland, a refuge f
contents, xi.
death of James
declaration of
Henry VII.
Henry VII. his
war with, ave
nish rebellion
reception of Per
James IV. of,
probability of a
land contemp
VII. xi. 323.
union with En
242.
case of the postr
Scots invade Nortl
250, 258.
slain at Norham
confluence of, t
218.
Scottus, his answer
Bald, xiii. 352.
Scribonianus, his co
Claudius, xiii. 347
Scripturæ ab ecclesi
80.
Scriptures, canon of
in the custody
xiii. 96.

Scriptures — *continued.*
authority of the Popish Church, to make them a shipman's hose or nose of wax, xv. 168.
Scylla and Charibdis, or the via media, xiii. 53, 157.
Sea, the empire of, is an abridgment of a monarchy, xii. 186.
naval power of Great Britain, *ib.*
how to drink up, xiii. 372.
land left by, belongs to the Crown, xiv. 293.
Seamen, anecdotes of, xiii. 416.
Sebastian, King of Portugal, his expedition on Africk, xiii. 194.
Second, place, that best to which all assign the second place, xiii. 270.
nobles, their value in a state, xii. 144, 145.
Secrecy, the virtue of a confessor, xii. 96.
in matter of counsel in a state, xii. 148, 331, 332.
a great means of obtaining suits, xii. 251, 297, 364.
Sects, religious, the vicissitudes of, xii. 276, 277.
new, planted in three manners, xii. 277.
how to put an end to, *ib.*
Seditions and troubles, essay on, xii. 123–131, 379–382.
the materials of, xii. 125, 126, 380.
poverty and discontent, xii. 126, 380.
causes and motives of, xii. 127, 380, 381.
remedies of, xii. 127, 381.
to remove want and poverty, xii. 127.
against tyranny, origin of, xiii. 86.
Seeming wise, essay on, xii. 164, 165, 346–348.
Seigniory, by homage, fealty, and rent, xiv. 200.
Seisure, an argument of property, xv. 46.
Seized, in Statute of Uses, xiv. 325.
Seizins, premier, xi. 326.
Sejanus, favourite of Tiberius, xii. 168.
Seldom cometh the better, xiv. 25.
Self, speech of a man's self ought to be seldom, xii. 193, 346.
wisdom for a man's self, essay on, xii. 158–160, 341, 342.
Self-commendation, xii. 262, 375.
Self-love, illustrated by the fable of Narcissus, xiii. 88–90.
Selfishness, essay on, xii. 158–160, 341, 342.
Semele, her fate, xiii. 138.
signifies the nature of good, xiii. 139.
Jovis pellex, xiii. 36.
Seneca, his prophecy of the discovery of America, xii. 203, 206.
on anger, xii. 271.
on fortitude, xiii. 155.
magnum est habere simul fragilitatem hominis et securitatem Dei, xiii. 51.
his conduct in banishment, xiii. 185.
Nero's description of his style, xiii. 342.
of Cæsar, xiii. 357.
Sense, likened to the sun by Philo Judæus, xiii. 354.
Septimius Severus, his dying speech, xii. 85, 86, 317.
Sequestrations, xv. 357, 358.
Serjeant's feast in Ely Place, Henry VII. present at, xi. 237, 238.
a second in the reign of Henry VII. xi. 336.
Sermones *Fideles*, xii. 72.
Sermons without divinity, Bishop Andrews on, xiii. 378.
Serpens, nisi serpentem comederit, non fit draco, xii. 216, 358.
Serpentum juventus perpetua, xiii. 42, 48.
Serpent, how possessed of perpetual youth, xiii. 145, 151.
be ye wise as serpents, xiv. 84.
Servants, gambling by, prohibited by a statute of Henry VII. xi. 334.
felony by, when not within 21 H. VIII. xiv. 222. — *See* Followers.
Sesa, Duke of, his saying concerning Pasquil, xiii. 337.
Seven wise men of Greece, xiii. 371, 372.
Severance of timber, xv. 35–61.
four manners of, xv. 44.
Severus, Septimius, his favourite Plautianus, xii. 169.
madness of his youth, xii. 223.
Sewers, commissions of, xv. 370.
Sforza, Ludovico, services to Charles VIII. xi. 238.

Shadow of Philip no longer after Chæronea than before, xiii. 368.
Shakespeare, *resemblance between Perdita's list of flowers and Bacon's Essay on Gardens*, xii. 235–237.
Shaving, Zelim shaved his beard, why, xiii. 375, 376.
Sheep-hook of Pan, why curved, xiii. 97.
Shell, the Prior of, his case, xv. 215, 240.
Shepherd, his government over his flock, xv. 198.
Sheriff, false return by, xiii. 218.
judge of hundred courts, xiv. 378.
county-courts kept by, *ib.*
office of, xiv. 378; xv. 379.
Sheriff's Turn, institution of, xiv. 378.
Sheriffwicks, patents of gaols reannexed to, by Henry VII. xi. 333.
Shine, Henry VII. calls a council at, xi. 77.
now Richmond, tournament at the King's Palace, xi. 192. — *See* Shyne, Richmond.
Shrewsbury, Earl of, joins Henry VII. at Newark, xi. 89.
Shyne, palace of Henry VII. at Richmond burned down, xi. 293.
Perkin Warbeck takes sanctuary at, xi. 301. — *See* Shine.
Sickness, three things material in, xiii. 383.
Sidney, Sir Henry, to the cuckold, xiii. 337, 338.
Sigismund the Transylvanian Prince, xiii. 194.
Silence succeeded the fables of the poets, xiii. 75.
of the Grecian sage, xiii. 392.
Sileni, in the train of Bacchus, xiii. 99.
quid referunt, xii. 447.
Silentia antiquitatis, fabulæ poetarum exceperunt, xii. 427.
Silk, manufactured, importation of, prohibited by statute of Henry VII. xi. 333.
Simnell, Lambert, the Pretender, xi. 70–92.
crowned at Dublin, xi. 85.
ends as a scullion in the royal kitchen, xi. 91.
Simon, Richard, brings forward Lambert Simnell, xi. 71.
why never brought to trial, xi. 74.
Simonides, his idea of God, xiii. 376, 377.
Simulation, essay on, xii. 95–99.
a vice, xii. 98.
advantages of it, *ib.*
disadvantages, xii. 99.
Sin, original, xiv. 51.
Singer, *his edition of Bacon's Essays*, xii 71.
Single life, essay on, xii. 101–103, 321, 322.
doth well with churchmen, xii. 102.
Sirens, or Pleasure, meaning of the legend, xiii. 169–172.
interpretatio fabulæ, xiii. 63–66.
Sixtus Quintus, Pope, his adventures after death, xiii. 344, 345.
Skeleton *of Lord Lovell discovered*, xi. 91.
Skelton, a tailor, one of Perkin Warbeck's councillors, xi. 283.
Skory, Sir Edward, xiii. 410, 411.
Slade's case, xv. 152.
Slavery, advantages of, in encouraging the military spirit of a nation, xii. 182.
Slubbering on the lute, xiii. 303.
Sluice, held by Lord Ravenstein against Maximilian, surrenders to the English and the Duke of Saxony, xi. 188, 189.
Socage tenure, xiv. 401–404; xv. 65.
Society, well ordered, is the basis of the improvement of human nature, xii. 215, 357.
Socrates, like the apothecaries' gallipots, xiii. 369.
when pronounced by the oracle to be the wisest man in Greece, xiii. 377.
on the book of Heraclitus the obscure, *ib.*
Solitude, he who delights in is either a wild beast or a god, xii. 166.
Solitudo, magna civitas, magna solitudo, xii. 166.
Solon to Crœsus, xii. 178.
to one who reproved him for weeping for his son's death, xiii. 349.
of his own laws, xiii. 349, 350.

Solon — *continued.*
compared the people to the sea, and orators to the winds, xiii. 377.
to Crœsus, xiii. 222, 243, 367, 405.
Somerset, *Earl and Countess of, concerned in the murder of Sir Thom as Overbury*, xii. 12.
Somerset, Sir Charles, head of a naval expedition in the reign of Henry VII., xi. 104.
friendly to suit of the four Shires, xv. 114–116.
Song combined with dance hath extreme grace, xii. 209.
in dialogues, *ib.*
Sonnet, *written by Bacon*, xiv. 113, 114.
Sospetto licentia fede, xii. 191.
Soul, dry light the best, xiv. 62. — *See* Light.
Spain, *James Contibald sent by Maximilian to negotiate a league with Henry VII. and Maximilian against France*, xi. 174.
her vast empire, xii. 182; xiii. 322.
her standing army, xii. 185, 186.
probability of her dismemberment, xii. 278.
Sir John Digby's embassy to, xiii. 175, 176.
results of the discovery of America, xiii. 196.
sun never sets on her dominions, xiii. 197.
war with the Low Countries, xiii. 237.
jest of the Spanish soldiers in Portugal when forbidden to plunder, xiii. 342.
Spangs or Oes, xii. 210.
Spaniards of small dispatch, xii. 162.
seem wiser than they are, the French are wiser than they seem, xii. 164, 346.
Spanish invasion of England, note by Bacon in Camden respecting, xii. 57–61.
Sparta, the state like a river, why, xiii. 351.
Spartan boys, their constancy under torture, xii. 214.
Speculative studies acquire new vigour when transplanted into active life, xiii. 71.
Speech, like cloth of Arras, xii. 171.
the art of, xii. 191–194, 345, 346; xiii. 309, 310.
discretion of, is more than eloquence, xii. 193, 194, 346.
forbearance of, xiv. 35.
of Morton, Archbishop of Canterbury, to the Parliament, xi. 117–124.
of George Gagvien, Prior of the Trinity, to the Council of Henry VII. xi. 159–164.
of Morton, the Chancellor, in answer, xi. 168–170.
of Henry VII. to the Parliament summoned in the 7th year of his reign, xi. 178–181.
of Sir William Warham sent ambassador from Henry VII. to the Archduke Philip, xi. 219–221.
of Perkin Warbeck to the King of Scots, xi. 245–249.
Speeches *inserted by Bacon in his History of Henry VII. character of*, xi. 116.
Speed, *character of his history*, xi. 14, 15.
his account of Perkin Warbeck misunderstood by Bacon, xi. 201.
Spelling *modernised*, xii. 70.
Spenser, Sir Hugh, his banishment, xv. 233, 234.
Spes in fundo vasis vix servata, xiii. 43.
vigilantis somnium, xiv. 63.
terrestris inutilis, xiv. 72.
omnis in futuram vitam cælestem consumenda, xiv. 73.
Sphinx, meaning of the legend, xiii. 159.
her riddles of two kinds, xiii. 161.
used by Augustus as his seal, xiii. 162.
interpretatio fabulæ, xiii. 54–57.
Spials, employed by Henry VII. xi. 360.
Spices, virtuous men likened to, xiii. 380.
Spirit ethereal within the earth, represented by the legend of Proserpine, xiii. 163–167.
Spirits, creation of, xiv. 49.
invocation of wicked, is felony, xv. 327.

Spiritus ætherius sub terrâ, per Proserpinam significatus, xiii. 59.
Spleen, steel taken for disease of, xii. 166, 167.
Staddles of coppice wood, xi. 145; xii. 179, 377.
Stafford, Edward, restored to his honours and lands, xi. 64.
Stafford, Humphrey, his unsuccessful rebellion against Henry VII. xi. 67–69.
Stafford, Thomas, rebels against Henry VII. xi. 67–69.
Stag, why Nemesis mounted on, xiii. 136.
Stairs in a palace, plan for, xii. 231.
Stanhope's case, of revocation of uses, Bacon's argument in, xiv. 356; xv. 78–91.
Stanley, Thomas, Lord, created Earl of Derby, xi. 56.
Stanley, Sir Thomas, entertains Henry VII. at Latham, xi. 235.
Stanley, Sir William, crowned Henry VII. at Bosworth Field, xi. 49.
favours Perkin Warbeck, xi. 212.
chamberlain to Henry VII. impeached by Sir Robert Clifford, xi. 225.
his wealth, xi. 227.
beheaded, *ib.*
his past services and rewards, xi. 229.
Stanley, Ferdinand, Earl of Derby, lawsuit at his death for the dominion of the Isle of Man, xii. 56.
Star Chamber, Court of, one of the noblest institutions of England, xi. 130.
its authority confirmed by Parliament, *ib.*
its composition and jurisdiction, xi. 131.
authority of, xiv 266.
Stars of natural inclination, sometimes obscured by the sun of virtue, xii. 227, 354.
Statua, why Cato had none, xiii 377.
Statutes of the realm, what, xv. 11.
mode of interpretation of, xiv. 324.
a statute cannot provide against its own repeal, xiv. 254.
of Uses, Bacon's reading on, in Gray's Inn, xiv. 283–353. — *See* Uses.
Statutes — *continued.*
quoted by Bacon,
14 Edward III. c. 5, xv. 211, 236.
25 Edward III. of treason, xv. 324.
27 Edward III. c. 5, xv. 246.
35 Edward III. xv. 209.
42 Edward III. c. 4, xv. 17.
c. 10, xv. 237.
50 Edward III. c. 6, xiv. 307.
1 Richard II. c. 9, xiv. 308.
2 Richard II. c. 3, *ib.*
7 Richard II. c. 12, *ib.*
15 Richard II. c. 5, *ib.*
4 Henry IV. c. 7, xiv. 309.
c. 18, xv. 19.
1 Richard III. c. 1, xiv. 310.
c. 5, xiv. 315.
11 Henry VI. c. 3, xiv. 309.
c. 5, *ib.*
1 Henry VII. c. 1, xiv. 310.
c. 7, xv. 19.
3 Henry VII. c. 1, xi. 130; xv. 19.
c. 2, xi. 132.
c. 3, *ib.*
c. 6 & 7, xi. 134.
c. 14, xi. 131.
c. 15, xi. 133.
4 Henry VII. c. 8, xi. 147.
c. 10, xi. 145.
c. 12, xi. 146.
c. 13, xi. 133.
c. 17, xiv. 310.
c. 18, xi. 146.
c. 19, xi. 142.
c. 20, xi. 146.
c. 23, *ib.*
c. 24, xi. 141.
7 Henry VII. c. 1 & 2, xi. 185.
c. 3, xi. 186.
c. 6, xi. 184.
11 Henry VII. c. 1, xi. 239.
c. 10, xi. 241, 335.
c. 12, xi. 243.
c. 20, xi. 242.
c. 21, *ib.*
19 Henry VII. c. 1, xi. 333.
c. 5, xi. 334.
c. 7, *ib.*
c. 10, xi. 333.
c. 12, xi. 335.
c. 13 & 14, *ib.*
c. 15, xiv. 310.
c. 21, xi. 333.

Statutes — *continued.*
1 Henry VIII. c. 8, xv. 18.
21 Henry VIII. c. 20, xv. 19.
22 Henry VIII. c. 14, xv. 18.
23 Henry VIII. c. 10, xiv. 311.
27 Henry VIII. xv. 120.
28 Henry VIII. c. 17, xiv. 254.
32 Henry VIII. c. 16, xv. 210.
c. 28; xv. 180.
c. 37, xv. 146.
c. 50, xv. 96.
33 Henry VIII. c. 1, xv. 19.
34 & 35 Henry VIII. c. 26, xv. 95.
35 Henry VIII. c. 2, xv. 208.
1 Edward VI. c. 11, xiv. 254.
2 Edward VI. c. 13, xv. 145, 146.
5 Elizabeth, c. 4, xv. 20.
13 Elizabeth, c. 7, xv. 19.
1 William & Mary, c. 27, xv. 118.
Stealing, property acquired by, xiv. 426.
Steel, to open the spleen, xii. 166, 167.
Stella, loved by Plato, xiii. 397.
Stellionate, crimes of, xi. 131.
Stenbeck, John, kinsman of Perkin Warbeck, at Antwerp, xi. 203.
Stile, John, sent by Henry VII. to report on the young Queen of Naples, xi. 338.
Stilpo, when the people flocked to stare at him, xiii. 378.
Stoics, their felicity that of a player, xiii. 272.
Stoke, near Newark, battle at, xi. 90.
Stone, the philosopher's, xii. 170.
Stowe, *character of his History*, xi. 14, 25.
Strange, Lord, joins Henry VII. at Newark, xi. 89.
Strangers, tradesmen, within the realm, policy of, xv. 210. — *See* Alien.
Strangeways plots Perkin Warbeck's escape from the Tower, xi. 302. 304.
Straying of cattle, xiv. 427.
Student's prayer, xiv. 101.
Studies, set hours for, xii. 213, 356.
essay on, xii. 252–254, 291, 292, 360, 361.
advantage of, xii. 252, 291, 360.
method of, *ib.*
effect of, on manners, xii. 253, 292, 361.
Styx, or Treaties, interpretation of the fable, xiii. 90, 91.
sive Fœdera, xii. 439–441.
Suave mari magno, xii. 83.
Subjects ought not to suffer for obedience to the king for the time being, xi. 240.
Subpœnas, in case of use, assignable, xiv. 298, 299.
patents of, xv. 274, 275.
Subsidy to Henry VII. insurrection in Yorkshire against the levying of, xi. 134.
granted by Parliament in the 11th of Henry VII. xi. 263.
in the 19th, xi. 335.
whether a Great Council had the power of granting, xi. 125.
indispensable to Queen Elizabeth, xiii. 223, 224.
Suffolk, Earl of, flies to the Lady Margaret, in Flanders, xi. 316.
flies again to Flanders, xi. 329.
excommunicated, xi. 331.
joins the Archduke Philip, *ib.*
returns to England, assured of his life, xi. 346.
committed to the Tower, *ib.*
Sugar, wealth of the first sugar man in the Canaries, xii. 201.
Suitors, essay on, xii. 249–251, 296, 297, 362–364.
Suits after judgment, xv. 358.
Sulphur, flower of, for the lungs, xii 167.
Summa lex, summa crux, xv. 140, 141.
Summum jus, summa injuria, xv. 148.
Sumptuary laws, xii. 127.
Sun good by aspect, evil by conjunction, xiii. 282.
Superstition, essay on, xii. 135–137, 340, 341.
worse than atheism, xii. 135, 340.
causes of, xii. 136, 340.
without a veil, a deformed thing, *ib.*
hardens men to bloodshedding, xii. 214, 357.

Supplicavit supersedeas, the writing of, a patent office, xv. 275.
Surety to keep the peace, xiv. 373.
Surrey, Earl of, left by Henry VII. to keep down the northern malcontents, xi. 137.
pursues James IV. into Scotland, xi. 276.
takes Aton Castle, *ib.*
Suspicion, essay on, xii. 190, 191.
among thoughts, like bats among birds, xi. 190.
how to guard against, xi. 191.
Swans, the companions of Diomede why changed into, xiii. 128.
Swart, Martin, leader of the Almaine auxiliaries against Henry VII. xi. 84.
killed at Newark, xi. 91.
Sweating sickness, an epidemic at the beginning of Henry VIIth's reign, xi. 54, 55.
Switzers, without a nobility last well, xii. 121.
why some states are compelled to employ them as mercenaries, xi. 144, 145.
Swords, amongst Christians, two, xii. 90.
Mahomet's sword is a third, *ib.*
Sybil raised the price of her last book, why, xiii. 287, 288.
Sylla, Cæsar's saying respecting, xii. 130.
his treatment from Pompey, xii. 167, 168.
chose the name of Felix, not Magnus, xii. 217.
Cæsar of, that he could not dictate, xiii. 356.
Symnell, Lambert, xi. 38. — *See* Simnell.
Syringa, or Echo, fable of her marriage with Pan explained, xiii. 101.
uxor Panis, xii. 449.

T.

Tacitus, on the reverence due to governments, xii. 125, 379.
on discontent in states, xii. 131, 382.
on mathematicians and fortune-tellers, xiii. 131.
de mathematicis et genethliacis, xiii. 30.
Talk, the honourabl 192, 345.
Tall men have eve xiii. 410.
Tanto buon che val 318.
Tate, Lord Mayor o against the Corn 271.
Taunton, Cornish Henry VII. xi. 266.
kill the Provost Perkin Warbeck
Tauri, duo Jovi a Pr lati, xiii. 43.
Taxation, xiii. 249, *in the time of* 125.
Taxes, effect of, o spirit of a people,
Taylor, Sir John, joi beck at Paris, xi.
Tellus Jovi consiliun
Tempests of State, x
Tenant in ancient de 401.
Tenant in tail, xiv. 202, 226, 234, 274; xv. 59, 6 after possibility, 263.
Tenison, Dr., *his p Baconiana*, xiii. 31
Tenure of lands, al Crown media diately, xiv. 3 institutions of th three, Frankalr service, socag in capite, xi. 326 xv. 62, 63, 77 Bacon's argum case, xv. 62–7
Tennyson, *image us with a Greek myth*,
Terpsichore, mother xiii. 169.
mater Sirenum,
Terretenant, xiv. 33
Territories, true gres dom does not size, xiii. 233– should be com persed, xiii. 2 the provinces no tion to the ment, xiii. 23

Territories — *continued.*
martial virtues proportioned to extent of dominion, xiii. 239, 240.
no province utterly unprofitable, xiii. 240, 241.
of Great Britain, xiii. 241, 242.
Thales, looking at the stars, fell into the water, xiii. 341.
on marriage, xiii. 374.
life and death all one, *ib.*
Theatre, God's, if a man can be partaker of, he shall likewise be a partaker of God's rest, xii. 113, 325, 326.
Thebes, two seen by Pentheus under the influence of Bacchus, xiii. 109.
duæ a Pentheo visæ, xiii. 10.
Themistocles, his speech to the king of Persia, xii. 171.
when asked to play the lute, xii. 176, 376.
to a lover who scorned him when fallen, and sought him when great, xiii. 334.
to the ambassador of a mean state, xiii. 357.
likened himself to a plane tree, xiii. 369.
likened speech to an Arras, *ib.*
If I had not been undone, I had been undone, xiii. 397.
Theobald's, Lord Burleigh's, Queen Elizabeth at, xiii. 376.
Theodosius, to a suitor, xiii. 355.
Theseus and Pirithous, their attempt to rescue Proserpine, xiii. 164, 166.
apud inferos, xiii. 59, 61.
Thomas, Richard, joins Henry VII. with Welsh troops at London, xi. 193.
Thomas, Sir Rice Ap, sent by Henry VII. to relieve Exeter, xi. 287.
Threats, xiv. 251, 265.
Thwaits, Sir Thomas, favours the cause of Perkin Warbeck, xi. 212.
tried for Perkin Warbeck's rebellion and pardoned, xi. 223.
Tiberius, his death-bed, xii. 85, 317.
his friend Sejanus, xii. 168.
his prophecy to Galba, xii. 204.
his nature, mire mingled with blood, xiii. 336.
Tick-tack, game of, xiv. 37.
Tidder, Henry, son to Edmund, Earl of Richmond, xi. 247, 248.
Tigellinus, his justification towards Burrhus, xii. 156.
Tigers, Bacchus, why drawn by, xiii. 140.
Tigranes, the Armenian, xii. 178.
Tigres ad currum Bacchi, xiii. 38.
Timber trees, whether upon a lease without impeachment of waste, the property after severance is in the owner of the inheritance, xv. 35.
windfalls, xv. 49.
tithes not paid for, why, xv. 40.
Time, to choose time is to save time, xii. 163, 335.
to a sick man seems longer when without a clock, xiii. 276.
trieth troth, xiv. 26.
Timotheus used to say, "and in this Fortune had no part," xii. 217, 359.
Tirrell, Sir James, employed to murder the princes in the Tower, xi. 215.
Richard III.'s grants to him, xi. 214, 215.
imprisoned and beheaded by Henry VII. xi. 216, 331.
Tissick, Henry VII. suffers from, xi. 351.
Tithes not paid for timber trees, why, xv. 40.
Tithonus in cicadam versus, interpretatio fabulæ, xiii. 20, 21.
Tobacco in Virginia, xii. 196.
Toleration in religion, xii. 91, 316.
Tongue, cutting out, felony. xiv. 374.
Torch-races in honour of Prometheus, xiii. 146, 155.
Tortures, voluntarily suffered by the Indians, xii. 214.
by Spartan boys, *ib.*
by Russian monks, *ib.*
Tournament at Shine, xi. 192.
Tournay, birthplace of Perkin Warbeck, xi. 202.
Tourneys and justs, xii. 210.
Tower, Earl of Suffolk committed to the Tower, xi. 346.
in a palace, plan for, xii. 230.
Trade, theory of prohibition of imports, xi. 333.
there be but three things which one nation selleth to another, the material, the manufacture and the carriage, xii. 128.

Tradesmen, strangers within the realm, policy of, xv. 210.
Trajan on the vain jealousy of princes, xiii. 350.
why called the wall-flower, xiii. 351.
likened the king's exchequer to the spleen, xiii. 352.
Tranquillity of mind, xiv. 88.
Travel, essay on, xii. 137–140.
diaries of, xii. 138.
things to be observed, *ib.*
Treason, cases of, xv. 320–322.
punishment, trial, and proceedings in cases of, xv. 321–324.
misprision of, xv. 324, 325.
petit treason, xv. 325, 326.
Treasure trove, xiii. 365.
Treaties, meaning of the fable of the river Styx, xii. 439–441.
Tree, man's life compared to, xii. 397.
Trenchard, Sir Thomas, receives Philip King of Castile at Weymouth, xi. 343.
Trent, Council of, xii. 136; xiii. 385.
Trespass, by lessee for trees, xv. 49.
by lessor not vi et armis, xv. 50.
Tressham's case, xv. 85.
Trial, new, granted upon a verdict, in cases above the value of 40*l.*, by Statute of 11 Henry VII. xi. 242.
Tribute paid by France to England in the reigns of Henry VII. and VIII. xi. 197.
double, requires two seedtimes and two harvests, xiii. 369.
a people overcharged with, never fit for empire, xii. 179, 377.
Trinity, the doctrine a paradox, xiii. 143.
Triumph, Roman, a wise institution, xii. 187.
essay on triumphs and masks, xii. 209–211.
True greatness of kingdoms, essay on, xii. 176–188, 376–378.
Trusts are either general or special, xiv. 290.
special, either lawful or unlawful, *ib.*
defined by Azo, xiv. 291.
Truth, essay on, xii. 81–84.
the sovereign good of human nature, xii. 82.
of civil business, xii. 83.
Truth — *continued.*
and falsehood, lik
of Nebuchadn
xii. 90.
that which has re
higher than t
relation to opi
273.
like ore dug from
refining, xiii. 3
Tunstal, Sir Richard
missioner by
Charles VIII. x
appointed by He
commissioner t
sidy, xi. 137.
Turks, designs of
against, xi. 16
note by Bacon i
specting Eliza
Constantinople,
contempt of m
them makes t
diers more base
a holy war propos
xiii. 177.
barbarism of the
198.
their religion, xii
Tutors in travelling, x
Tydder Owen, xi. 374
Typhon, or the rebel,
of the fable, xi
sive rebellis, xii.
his capture by P
the fable, xiii. 1
a Pane in retibus
terpretatio fabu
Tyranny, origin of reb
xiii. 85, 86.
Tyrrell, Sir James. —

U.

Ulysses at the islands
xiii. 169, 171.
vetulam suam p
talitati, xii. 10
apud insulas Sir
65.
Uniformity and Unity
xii. 89.
Union *of England wit*
221, 242.
foreseen by Henr
commission of, or
ings in, xii. 151

Union — *continued.*
four unions of territory to England, xv. 238.
Unity, essay on unity in religion, xii. 86–92.
of the church, xii. 87.
fruits of, xii. 88.
bounds of, *ib.*
means of procuring, xii. 90.
Unmarried men have done the greatest works for the public good, xii. 101.
best friends, masters, and servants, xii. 102, 321.
not always best subjects, *ib.*
best churchmen, *ib.*
indifferent judges and magistrates, *ib.*
Urine, Vespasian's tribute on, xiii. 364.
Urswick, Christopher, sent as ambassador by Henry VII. to Charles VIII. xi. 106.
deceived by the French king, xi. 108.
sent again as commissioner, xi. 110.
almoner to Henry VII. sent ambassador to Maximilian, xi. 192.
carries the order of the Garter to Alphonso duke of Calabria, xi. 199.
concludes a treaty with the Archduke, xi. 259.
Usage, how applied in the interpretation of Statutes, xv. 134, 135.
Use maketh mastery, xiv. 26.
Uses, Statute of, Bacon's reading upon, in Gray's Inn, xiv. 159, 160, 283–353.
a fragmentary treatise, xiv. 279–282.
introductory discourse, xiv. 283–285.
nature of a use, xiv. 287–292.
what it is not, xiv. 287–291.
what it is, xiv. 291.
use defined, "an ownership in trust," *ib.*
three parts of a use, xiv. 292.
three properties of a use, *ib.*
differs from legal estate, in the raising of it, xiv. 295, 296.
the preserving of it, xiv. 297, 298.
the transferring of it, xiv. 298–300.
Uses, Statute of — *continued.*
the determining and extinguishing of, xiv. 300, 301.
inception and progression of, xiv. 301–311.
in the civil law, xiv. 301, 302.
compared to copyholds, xiv. 302.
in course of common law, xiv. 303–306.
first about the reign of Richard II. xiv. 304, 305.
in course of statutes, xiv. 306–311.
the statute admirably drawn, xiv. 313.
the time of it, *ib.*
the title of it, xiv. 314.
the precedent taken from 1 R. II. 5, xiv. 315.
the preamble, xiv. 315–324.
the inconveniences, xiv. 316–321.
to heirs, that they are weak for consideration, xiv. 316, 317.
to jurors and witnesses, that they are obscure and doubtful for trial, xiv. 317, 318.
to purchasers, that they are dangerous for want of notice and publication, xiv. 318, 319.
to such as come in by gift of law, that they are exempted from such titles as the law subjects possession unto, xiv. 319–321.
the remedy by the statute, xiv. 321–323.
by extirpation of feoffments, xiv. 321.
by taking away the deceit of uses, xiv. 321, 322.
the case, or supposition, of the statute, xiv. 324–327.
the purview, xiv. 327–336.
of the general case, xiv. 327–332.
of the joint feoffees, xiv. 332–335.
of execution of rents, xiv. 335, 336.
provisoes respecting.
wills, xiv. 336.

Uses, Statute of—*continued.*
dower, xiv. 336.
enrolment of bargains and sales, *ib.*
in protection of cestui que use, xiv. 337, 338.
the raising of uses, xiv. 339–353.
the persons who are actors in the conveyance, *ib.*
who may be seized to a use, xiv. 339–343.
who may be cestui que use, xiv. 343–349.
who may declare a use, xiv. 349–353.
the use itself, xiv. 339.
the form of the conveyance, *ib.*
Chudleigh's case,
meaning of the statute illustrated,
from consideration of the law before the statute, xv. 169, 170.
from the preamble of the statute, xv. 170–174.
from the body of the statute, xv. 174–179.
inconveniences of a contrary interpretation, xv. 180–187.
revocation of uses, Bacon's argument in Lady Stanhope's case, xv. 78–91.
Usurer, will think of death, when, xii. 398.
Usury, xii. 128.
to be repressed, xi. 123.
the bastard use of money, xi. 134.
laws made against, temp. Henry VII. *ib.*
the worst means of gain, xii. 201.
ploughs on Sundays, *ib.*
essay on, xii. 218–222.
invectives against, xii. 218.
is a concessum propter duritiem cordis, *ib.*
discommodities of, xii. 219.
commodities of, xii. 220.
abolition of, impossible, *ib.*
reformation and reiglement of, xii. 220–222.
two rates of, proposed, xii. 221.
Usus fructus, and dominium, xiv. 301; xv. 39.
Utlawries, a means of oppression, to Empson and Dudley, xi. 326.

V.

Vagabonds, statute of Henry VII. respecting, xi. 334.
Vain-glory, essay on, xii. 260–263, 374, 375.
among soldiers essential, xii. 261.
helps to perpetuate a man's memory, xii. 262, 375.
distinguished from ostentation, *ib.*
Value, legal meaning of, xv. 89, 90.
Vaughan, Hugh, kills Sir James Parker at a tournament at Shine, xi. 192.
Vecture of manufactures, xii. 128.
Vena porta, merchants in a kingdom, xii. 145.
an erroneous metaphor, ib.
of wealth, is merchandizing, xii. 219.
Venatorum, Deus Pan, cur, xii. 446.
Venus, birth of, xiii. 114.
unde nata, xiii. 15, 16.
why mother of Cupid, xiii. 122, 125.
cur mater Cupidinis, xiii. 23, 25.
wounded by Diomede, meaning of the fable, xiii. 126.
dextra ejus a Diomede vulnerata, xiii. 26.
Verba fortiùs accipiuntur contra proferentem, xiv. 198.
generalia restringuntur ad habilitatem personæ, xiv. 203, 231, 232.
ita intelligenda, ut res magis valeat quàm pereat, xiii. 203.
cum effectu accipienda, xiii. 204; xv. 120.
non accipi debent in demonstrationem falsam, quæ competunt in limitationem veram, xiv. 239, 240.
Verdict, statute of Henry VII. giving a new trial on false verdicts, xi. 242.
Vertue, *his engraving of Henry VII.* xi. 18.
Verulam House, why built by the pond-yard, xiii. 393.
Verunsell, Lord, President of Flanders, xi. 259.
Vespasian, his dying speech, xii. 85, 317.
prophecy of Christ in his reign, xii. 204.

Vespasian — *continued.*
to his son Domitian, xiii. 345, 346.
to a suitor, xiii. 338, 339.
to Apollonius and Euphrates, xiii. 339.
his tribute on urine, xiii. 364.
solus imperantium mutatus in melius, xii. 115, 327.
Vicinity, that which is next to a good thing is good, and vice versâ, xiii. 280.
Vicissitude of things, essay on, xii. 273–280.
on the face of the globe, xii. 274.
in the superior globe, xii. 275.
in the weather, xii. 276.
of religions, xii. 276, 277.
in wars, xii. 277–280.
Villain, xiv. 342; xv. 293.
his issue belong to the Lord jure naturæ, xiv. 235.
regardant, xiv. 194.
Vindictive persons live the life of witches, xii. 93.
Vines, the sweet scent of the flower of, xii. 238.
Vinum Dæmonum, poesy, xii. 82.
Virga aurea, xiii. 61.
Virtue, its relation to beauty, xii. 225.
many virtues not understood by the common people, xii. 258, 368.
Voluptas, Tithoni fabula, xiii. 21.
per Pandoram significata, xiii. 49.
Sirenum fabula, xiii. 63–66.
Vulcan, his wooing Minerva, xiii. 131.
the maker of Pandora, or Pleasure, xiii. 153.
Vulcanus Pandoræ artifex, xiii. 43.
opificium voluptatis ei deputatur, xiii. 49.

W.

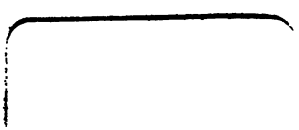
Wager about repeating the Paternoster, xiii. 397, 398.
of battle, xv. 281.
Waiving, property in goods by, xiv. 427.
Wales, jurisdiction of judges in, xv. 377, 378.
Wall-flower, Trajan, why so called by Constantine, xiii. 351.
Walsingham, shrine of our Lady at, visited by Henry VII. xi. 87.
the king devotes his banner there after his victory, xi. 92.
War, a just fear of an imminent danger is a lawful cause, xii. 143.
the just occasions of, xii. 184, 185; xiii. 209, 210.
civil, like the heat of a fever, xii. 185.
foreign, like that of exercise, *ib.*
vicissitudes and changes in, xii. 277–280.
in the seats of, xii. 277.
anciently moved from east to west, *ib.*
northern nations the more martial, xii. 278.
at the breaking up of great empires, *ib.*
in the weapons, xii. 279.
invention of ordnance, *ib.*
in the conduct of, xii. 280.
arms flourish in the youth of a state, learning in its middle age, trade in its decline, *ib.*
signified by the fable of Perseus, xiii. 103–105.
three precepts thereby taught, xiii. 103.
fable of Achelous refers to military invasions, xiii. 137.
advertisement touching an Holy War, xiii. 191–218.
for the propagation of Christianity, whether justifiable, xiii. 200, 204.
men, not money, its sinews, xiii. 243.
in peace sons bury their fathers, in war, vice versâ, xiii. 359.
king's prerogative in, xv. 229.
Warbeck. — *See* Perkin Warbeck.
Wardship, prerogative of, xv. 14.
one method of oppression by Henry VII. xi. 326.
Warham, Sir William, ambassador from Henry VII. to the Archduke Philip in Flanders, xi. 218.
his speech, xi. 219–221.
concludes a treaty with Flanders, xi. 259.

Warrantizabimus will not serve without clause of recompense, xv. [illegible].
Warranty, collateral, xiv. [illegible].
  pleaded in bar, xiv. [illegible].
Warwick, Edward Plantagenet, Earl of, xi. 72.
  confined by Richard III. [illegible].
  reported to have escaped from the Tower, xi. 74.
  counterfeited by Lambert Simnell, xi. 75.
  paraded through the streets of London, xi. 80.
  beheaded on Tower Hill, xi. 305.
Waste, by whom punishable, xiv. [illegible].
  action for, xiv. [illegible].
  impeachment of, Bacon's argument, xv. 35–41.
  writ of, xv. 40.
Ways, the nearest commonly the foulest, xiii. 379.
Weather, cycle of, every 35 years, xii. 276.
Weeks, Jack, saying of, xiii. 405.
Weights and measures, statute of Henry VII. to establish uniformity of, xi. 186.
Wells, Cornish rebels against Henry VII. at, xi. 266.
Wells, Viscount, made commissioner to treat with Flanders by Henry VII. xi. 259.
Welsh Marches, jurisdiction of the Court of, xv. 95, 119–154.
Westminster, Henry VIIth's first Parliament at, xi. 57.
  Chapel of Henry VII. at, xi. 365.
Weymouth, Philip of Castile driven into by a storm, xi. 343.
Wheels of trade, xii. 128.
Whitehall Chamber, its jurisdiction, xi. 130.
Whitehead to Queen Elizabeth, xiii. 384.
Whitsand Bay, Perkin Warbeck lands at, xi. 284
Wife, he that hath wife and children hath given hostages to fortune, xii. 101, 321.
  a discipline of humanity, xii. 102.
Wight, Isle of, granted in sovereignty by Edward III. to Lord William Montague, xv. 13.
Wilford, Ralph, a counterfeit Earl of Warwick, xi. [illegible].
  executed, [illegible].
Will, the human, most maniable and obedient to discipline, xiii. [illegible].
Wills, xiv. 421–425.
  proviso in Statute of Uses, xiv. [illegible].
  statute of 32 Henry VIII. xv. 180.
  cannot be made irrevocable, xiv. 259.
Wilton Bridge, statute for the repair of, xv. 145.
Winchester, Bishop of v. the Prior of St. John of Jerusalem, xv. 280.
Windfalls of trees, xv. 49.
Windham, Sir John, imprisoned and beheaded by Henry VII. xii. [illegible], 331.
Winding sheets of nature, deluges and earthquakes, xii. 274.
Windows, inbowed, xii. 233.
Windsor, meeting of Henry VII. and Philip, King of Castile, xi. 344.
Wine, reply of the patient ordered to abstain on account of his bleer eyes, xiii. 348, 349.
Winwood, Sir R., his quarrel with Bacon, xiii. 413.
Wisdom for a man's self, essay on, xii. 158–160, 341, 342.
  the worst wisdom for a public servant, xii. 158, 159, 341, 342.
  the works of, surpass the works of strength in dignity, xiii. 110.
Wise, essay on the art of seeming wise, xii. 164, 165, 346–348.
Wise man, how different from a fool, xiii. 381.
Witchcraft, the act of envy hath somewhat of it, xii. 107.
  is felony, xv. 327.
Wives are young men's mistresses, companions for middle age, and old men's nurses, xii. 103, 322.
  of kings, xii. 143.
Woad of Gascoigne and Languedoc to be imported only in English bottoms, xi. 145.
Wolsey, Thomas, employed in negotiating a marriage between Henry VII. and Lady Margaret, Dowager Dutchess of Savoy, xi. 349.

Women, advanced by their husband or his ancestors, not allowed to alienate the lands by statutes of 11 Henry VII. xi. 242.
should not go out to a colony, until it is already settled, xii. 198.
Woodville, Lord, *his project of raising a force to aid the Duke of Brittany countermanded*, xi. 105.
joins the duke with auxiliaries, xi. 111.
killed at the battle of St. Alban's, xi. 127.
Words and thoughts, xiv. 17, 18.
general, shall not be stretched to a foreign intendment, xiv. 203.
so to be interpreted as to give effect to the intention, *ib.*
so to be understood, that they work somewhat, *ib.*
ambiguity of, in pleading, xiv. 205.
Works of God, and the works of man, xiv. 81.
Worseley, William, Dean of St. Paul's, pardoned for Perkin Warbeck's rebellion, xi. 223.
Wotton, Sir Henry, of critics, xiii. 342.
Wounds, of lover bleeding afresh, xiii. 362.
Wreck, xiv. 428.
the statute of wrecks, xiv. 232.
Writer's Prayer, xiv. 102.

X. — Z.

Ximenes, Cardinal, the smoke from the musket incense to him, xiii. 339.
Xystus V. his jest on his own humble birth, xiii. 342.
Yeomanry, Statute of Henry VII. to prevent their decrease, xi. 143.
York, house of, its title to the throne, xi. 48.
march of the rebels under Lambert Simnell on, xi. 88.
Henry VII. at, xi. 137.
Yorkshire, insurrection against the commissioners appointed by Henry VII. to raise a subsidy, xi. 134.
Youth, art of prolonging once known, and lost, xiii. 150.
essay on youth and age, xii. 223–225, 351, 352.
may be old in hours, xii. 223, 351.
has a more lively imagination than age, *ib.*
of divers great men, *ib.*
fitter to invent and execute, than judge and counsel, xii. 224, 352.
characteristics of, *ib.*
compared with age, *ib.*
Zelant, a, xiii. 191.
Zelim, shaved his beard, why, xiii. 375, 376.

END OF THE LITERARY AND PROFESSIONAL WORKS.

PRINTED BY H. O. HOUGHTON.